BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov

DEBRA L WITT	:	
	:	**HEARING NUMBER:** 22B-UI-18590
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
IA VETERNS HOME- MARSHALLTOWN	:	
	:	
Employer	:	

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

On the reduction in pay, the Administrative Law Judge is clearly correct that the Claimant acquiesced in any change. In *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990) the claimant was given the choice of 50% pay cut or demotion with less pay. This was caused not by Mr. Olson's poor performance, but by economic conditions. Olson chose the demotion. After working the new position for several months he quit, and argued a change in contract of hire. The Court of Appeals refused to recognize a "trial basis" exception and disqualified Mr. Olson because he had acquiesced to the change through his agreement. In the case before us the Claimant was given a similar choice, but caused not by economic conditions but the Claimant's workplace injury. In both cases the reason for the pay cut was caused by the employment, and yet this does not change the analysis of acquiescence. Had the Claimant quit back in 2019 she would likely have gotten benefits due to a quit caused by her workplace injury. But she did not quit in 2019, and instead accepted the pay cut and worked in the new position for many months. (We agree with the

Administrative Law Judge that even six months would be sufficient to show acquiescence.) Thus the Claimant falls under the rule in *Olson* that by agreeing to work in the new position the Claimant had acquiesced to the terms of that new position, and it is not good cause to quit that those terms are different than the terms of the old position.

As far as the Employer's suggestion that the Claimant consider quitting this likewise does not make the quit involuntary or attributable to the Employer. Simply being reprimanded does not justify a quit based on the assumption that worse is coming. 871 IAC 24.25(28). Having looming layoffs will not justify quitting before the layoff materialize. 871 IAC 24.25(29). Similarly, having poor work performance does not justify a preemptive quit where the employer has not asked the person to leave. 871 IAC 24.25(33). We reach a similar conclusion in this case. Moreover, we agree with the Administrative Law Judge that the mere suggestion of resignation would not have caused the Claimant to resign without the payment of $77,000. We thus turn to the issue of when to disqualify a Claimant who quit as part of a Workers' Compensation settlement.

What the unemployment law is concerned about is this: To what can we attribute the current period of unemployment? One must keep in mind that even a person who is not separated from employment will be considered unemployed if they are not performing services and not paid in a given week. So there are two *relevant* situations for a claimant who enters into a Worker's Compensation settlement. Either the Claimant will be able to stay on the job and earn their regular wage if they don't settle, or the Claimant will not be able to stay on the job and earn their regular wage if they don't settle.

A claimant who cannot stay on the job if they settle, or who will be earning sufficiently reduced wage as to be partially unemployed, would face a choice of settle and be unemployed or don't settle but still be unemployed. Either way the result of unemployment follows. So the relevant period of unemployment is not really caused by the settlement.

On the other hand, a claimant who has the option of staying at work faces the choice of don't settle and stay employed, or settle and become unemployed. Here the settlement brings with it the period of unemployment. Thus the courts in such cases look to whether the buyout was in the context of ongoing or imminent unemployment.

The citation by the Administrative Law Judge is consistent with the law and purpose of the *Employment Security Law*. *See Edward v. Sentinel Management Co.*, 611 N.W.2d 366 (Minn. App. 2000); *Larson v. Michigan Employment Sec. Com'n.,* 140 N.W.2d 777 (Michigan App. 1966) (benefits allowed to worker who could not perform former duties and who faced remaining employed with no income or resigning in order to receive income); *Brady v. Board of Review,* 704 A. 2d 547 (N.J. Sup. 1997)(setting out two part test and citing cases and explaining benefits are generally only allowed when there are objective facts supporting conclusion that if the resignation had not taken place layoff was imminent); *Childress v. Muzzle*, 663 SE 2d 583 (W. Va. 2008)(adopting *Brady* two part test); *Renda v. Unemployment Comp. Bd. of Review*, 837 A. 2d 685 (Pa. Cmwlth 2003); *Uniroyal Goodrich Tire v. Employment Sec.*, 913 P. 2d 1377 (Okla. App. 1996); *Sievers v. Unemployment Comp. Bd. of Review*, 124 Pa.Cmwlth. 52, 555 A.2d 260, aff'd per curiam, 520 Pa. 83, 551 A.2d 1057 (1987); *York v. Review Bd. of Ind. Employment Sec.*, 425 NE 2d 707 (Ind. App. 1981); *Kentucky Unemploy. Ins. Com'n v. Kroehler Mfg. Co*., 352 SW 2d 212 (Ky App. 1961); *Read v. Employment Sec. Dep't*, 62 Wash.App. 227, 813 P.2d 1262 (1991); *Robinson v. Department of Employment Sec.*, 827 P.

2d 250 (Utah App. 1992); *see also McArthur v. Borman's Inc*., 200 Mich. App. 686, 505 N.W.2d 32 (1993)(accepting buyout rather than new union contract is disqualifying quit); *St. Joseph Health Ctr. v. Missouri Labor and Indus. Relations Comm'n*, 768 S.W.2d 123 (Mo.App.1988) (accepting lump sum when worried about layoffs still disqualifying quit). *Larson* applies when the claimant has "one tenable alternative," but not when staying on the job while litigating the Worker's Compensation case is also a tenable alternative. In this case the Claimant had the option of remaining on the job and she would not be unemployed or partially unemployed had she worked the switchboard position. The record does not show that separation from employment was "imminent" as discussed in the precedent. Thus the Administrative Law Judge's ruling that Claimant's quit was not attributable to the Employer is correct and we deny benefits. The Claimant may indeed have very good reasons for voluntarily agreeing to settle the Worker's Compensation case, but everyone with a dispute with their employer has reasons they settle and the Employment Security Law is not in place as a settlement supplement law.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

RRA/fnv