IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

GREGORY K ONDRACEK
Claimant

MEDIVAC CORP
Employer

APPEAL NO. 07A-UI-07060-N

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/24/07 R: 01
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Gregory Ondracek filed an appeal from a representative's decision dated July 16, 2007, reference 01, which denied benefits based upon his separation from Medivac Corporation. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on August 30, 2007. Mr. Ondracek participated personally. The employer participated by Joseph Lauterbach, Attorney at Law and David Miller, Company President. Employer's Exhibits One through Eleven were marked and received into evidence. Claimant's Exhibits A and B were marked and received into evidence.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from November 2, 2003 until on or about June 1, 2007 when he voluntarily quit employment. Mr. Ondracek held the position as full-time handicap van driver and was paid by the hour. His immediate supervisor was David Miller, Company President.

Mr. Ondracek left his employment with Medivac Corporation due to general dissatisfaction with the number of working hours that he was required to work by the company. At the time of hire the parties' initial agreement was that the claimant would work 40 hours per week and would not work weekends. Subsequently in 2006, due to business conditions, the hours of drivers were increased. Mr. Ondracek's, as well as other drivers, additional hours working included weekend work. Mr. Ondracek did not quit his job or object at the time but continued in employment accepting the change. On April 24, 2007, approximately five weeks before his leaving, Mr. Ondracek requested additional working hours from the company indicating that he needed "more than 40 hours." Based upon the claimant's request, he was assigned additional hours. The company attempted to accommodate Mr. Ondracek's request when he asked for time off in advance. And when the claimant indicated at times that he was "too tired," the claimant was allowed to rest or end his shift.

Approximately 6:30 a.m. on the morning of May 31, 2007, Mr. Ondracek faxed a letter to the company's president indicating his desire to cut back to 40 hours per week and further indicating that if cutback was not possible, that the claimant would leave employment. The claimant stated no date for the company president to respond and Mr. Miller after considering the matter, planned on contacting Mr. Ondracek the next workday, June 1, 2007, to discuss the claimant's request. Prior to contacting the claimant on the morning of June 1, 2007, the company president was informed by another employee that the handicap van assigned to the claimant had been left at a pick up location with the claimant's company keys and other company property that had been assigned to Mr. Ondracek. Included in the van was a letter from the claimant to the company president indicating that because the company president had not called the claimant that the claimant, in effect, assumed that his request had been "laughed at" and that the claimant was leaving the company. Mr. Ondracek again referenced the number of working hours per pay period the claimant believed was excessive. During the most recent year of the claimant's employment Mr. Ondracek averaged 51.84 hours of work per week. As the driving position was not governed by the D.O.T. regulations or the requirement of a commercial driver's license, the number of hours that the claimant was required to work and/or drive per day did not exceed the limits set by law. Mr. Ondracek supplied no medical documentation indicating that he was required to leave due to a medical condition that was caused or related to his employment. Work continued to be available to the claimant at his time of leaving.

REASONING AND CONCLUSIONS OF LAW:

In this case, the evidence establishes that Mr. Ondracek in the past had worked for an employer that required substantial amounts of mandatory overtime and believed that those extensive working hours had caused the claimant personal difficulty. When initially hired by Medivac Corporation it was agreed that the claimant would generally work a 40-hour workweek and would not be required to work weekends. The evidence establishes, however, that in the year 2006, due to business conditions, drivers were required to work in excess of 40 hours. Mr. Ondracek accepted that change and remained employed for a substantial period of time after the change in working hours had been implemented by the employer. The evidence establishes that the employer was willing to accommodate Mr. Ondracek's needs if he requested time off in advance and if the company were able to schedule time off based upon their business requirements. Approximately five weeks before the claimant's leaving Mr. Ondracek asked for more working hours and was accommodated by the company.

It appears that Mr. Ondracek became increasingly dissatisfied at the number of working hours he was being assigned, although he had requested more hours, and believed that a previous pattern with a former employer was reoccurring that might affect his personal relationships.

The employer first became aware of the level of the claimant's dissatisfaction on May 31, 2007, when Mr. Ondracek faxed a letter to the company president requesting a reduction in working hours and explaining the reasons for his request. Although it appears that Mr. Ondracek expected an immediate response from the company president, the claimant did not indicate that in his letter or set a date for the employer to respond. When the claimant received no calls or notification from the company president that working day, May 31, 2007, Mr. Ondracek quit his employment without further notice or opportunity for the employer to respond by leaving the company van and equipment in an unauthorized location that was convenient for Mr. Ondracek. In the van was the claimant's resignation letter that stated the claimant had "assumed" that the company president had "laughed" at his request that had been faxed to the employer that morning.

Claimants who voluntarily leave employment without "good cause attributable to the employer" are disqualified for benefits. (See Iowa Code section 96.5-1). The claimant has the burden of proof in cases involving quits. (See Iowa Code section 96.6-2). The Supreme Court of Iowa and the Court of Appeals of Iowa have ruled in a number of cases that before benefits may be awarded to claimants who have quit, the evidence should show that before resigning the claimant (1) put the employer on notice of the condition, (2) warned the employer that he or she may quit if the situation is not addressed and (3) give the employer a reasonable opportunity to address legitimate grievances. See Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993) and Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa App.1996).

Iowa Code section 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In this case the administrative law judge finds that Mr. Ondracek did not provide the employer sufficient notice of his job dissatisfaction and did not give the employer a reasonable opportunity to address claimant's job grievances before leaving employment. The employer was placed on notice of Mr. Ondracek's job dissatisfaction on the morning of May 31, 2007 and the claimant quit his job that evening without further notice of the employer. The claimant had not specified or set a time for the employer to respond. The claimant did allow the employer sufficient time to consider or respond to his request before quitting. The administrative law judge therefore finds the claimant's leaving to be under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated July 16, 2007, reference 01, is hereby affirmed. The claimant left employment under disqualifying conditions. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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