BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DONALD E BORN	:	
	:	**HEARING NUMBER:** 16B-UI-03819
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
IOWA BOOK & SUPPLY CO	:	
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, 24.1-113

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Iowa Book & Supply, Co. is a corporation partially owned by Pete Vanderhoef. Iowa Business Supply, LLC was a limited liability company also partially owned by Pete Vanderhoef. Donald Born was equal owner of Iowa Business Supply, LLC with Pete Vanderhoef. The Employer of Claimant was Iowa Business Supply, LLC, but Iowa Book & Supply, Co. wrote the checks to the Claimant. While Iowa Book wrote the checks for the Claimant's salary, Iowa Business would reimburse Iowa Book each month for the salary. Iowa Business was the Employer.

Iowa Business was half-owned by the Claimant. Mr. Vanderhoef sought to sell his interest in Iowa Business. The Claimant originally intended to purchase Mr. Vanderhoef's half but his financing fell through. Mr. Vanderhoef then sought to sell to Tallgrass Business Resources. By March of 2015

Mr. Vanderhoef was already in negotiations with Tallgrass Business Resources. The Claimant also was aware of these negotiations since he was a half-owner of Iowa Business. During these negotiations it became clear, at least by April 6, 2015, that the Claimant would not continue as a permanent employee of Tallgrass, but rather might expect to continue at most for 3 months or so as a liaison during the transition. By June 30, 2015 both the Claimant and Mr. Vanderhoef had voluntarily sold their interests in Iowa Business to Tallgrass for valuable consideration. Tallgrass declined to employ the Claimant when he returned around the first week of September. He filed for benefits on February 28, 2016.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

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

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b).

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2).

The bottom line here is that the Claimant took steps that he knew would lead to his job ending. He sold his business interest in the company that employed him, and as a result lost his job. The most he could expect was continued employment during the 3 months after the transfer. The quit was not rendered involuntary merely because Mr. Vanderhoef sought to sell his half of the business. Where the quit is forced by circumstances at the employment itself, rather than by personal circumstances, and where policy supports the quit because it benefits the employer and the public, then the quit is "involuntary" in the sense that it is forced by the employment situation itself. *See Ames v. Employment Appeal Board*, 439 N.W.2d 669 (Iowa 1989); *Sharp v. EAB*, 479 N.W.2d 280 (Iowa 1991). Where creditors force an owner to file for receivership the sale is not voluntary. But here the Claimant sold rather than operate the business for reasons that were personal. When a quit is not forced by purely business connected reasons, it is generally regarded as voluntary. *See e.g. Moulton v. Iowa Emp't Sec. Comm'n*, 239 Iowa 1161, 34 N.W.2d 211 (Iowa, 1948); *Wolf's v. Iowa Employment Sec. Commission,* 59 N.W.2d 216, 244 Iowa 999 (Iowa, 1953); *White v. Employment Appeal Board,* 487 N.W.2d 342, 345 (Iowa 1992). Here the Claimant sold because he judged that it was his best option from a financial perspective. While he might have lacked many good options at the time he sold, this was due to issues personal to the Claimant, including mental health issues, rather than issues directly connected to the Employer. We conclude that a voluntary quit has been proven. Since the Claimant did not prove good cause *attributable to the Employer*, he is denied benefits.

Rule 871 IAC 24.25(38) provides:

> 24.25(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, **no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation**.

By analogy to this regulation we could allow benefits to the Claimant during the period he *would have* been working for Tallgrass had they kept him on as a liaison. The theory would be that since the Claimant thought, at the time of sale, that he would be kept on as a liaison, and since he was terminated rather than kept on for that limited purpose, then he would be allowed benefits during the "liaison period." But the Claimant did not file for benefits during this period. Rather he filed about *seven* months after the sale. Indeed even giving the Claimant three months (rather than the two appearing in the emails), and even running the three months from September he would not have expected to keep employed as a liaison after, at the latest, December, 2015. This being the case even allowing benefits during a very generously extended liaison period we cannot grant benefits to the Claimant because he did not claim for benefits during this period.

Finally, there **is no overpayment in this case.** Since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative, the Claimant falls under the double affirmance rule:

> 871 IAC 23.43(3) Rule of two affirmances.
>
> a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.
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> b. However, if the decision is subsequently reversed by higher authority:
>
> (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
> (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
> (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

The Board has reviewed the argument of the parties, and all other submissions. In reviewing the argument the Board disregards any factual assertions which are not based on testimony at hearing, or on exhibits at hearing, or on facts of which judicial notice may be taken or on other facts within the specialized knowledge of the agency. Where official notice of a fact is taken, our decision will specifically say so.

The Employer has submitted new and additional information which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional information was reviewed we deny its admission. In reviewing the additional information, we review it for whether the proffered information is admissible under 17A.14(1), and whether sufficient cause excuses the failure to present the information at hearing. If we find that the information is not admissible under the standards of 17A.14(1) then the information is not relied upon in making our decision, and it receives no weight

whatsoever, but rather is wholly disregarded. If we find that failure to present the new and additional information at hearing is not excused by sufficient cause then the new and additional information is not relied upon in making our decision, and receives no weight whatsoever, but rather is wholly disregarded. There is no sufficient cause why the new and additional information submitted by the Employer was not presented by the Employer at hearing. Accordingly the Board finds that the admission of the additional information is not warranted in reaching today's decision. All the new and additional information submitted by the Employer has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

DECISION:

The administrative law judge's decision dated April 20, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit but not for good cause attributable to the employer. Accordingly, he is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible.

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv