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

DEBBY K BUCK	:	
	:	**HEARING NUMBER:** 15B-UI-11329
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
CDS GLOBAL INC	:	
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: 96.5-2-A, 96.4-3

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

We do not adopt the Administrative Law Judge's findings and conclusions to the extent that they are based on the conclusion that the Claimant was terminated.

Instead we find that the Claimant resigned her position effective September 26, 2014 when she sent the letter of resignation. We do agree with the Administrative Law Judge's conclusion that the Claimant's health condition was work related for unemployment purposes as her condition was aggravated by the employment. *Decision of Administrative Law Judge*, p. 2. When a quit is caused by a condition that is caused by or aggravated by the employment then the condition is generally work related for unemployment purposes.

In *White v. Employment Appeal Board*, 487 N.W.2d 342, 345 (Iowa 1992) the Supreme Court explained the attribution rules in health quit cases:

> We have held that an illness-induced quit is attributable to one's employer only under two circumstances. First, when the illness is either "caused or aggravated by circumstances associated with the employment," regardless of the employee's predisposition to succumb to the illness, … Second, when the employer effects a change in the employee's work environment such that the employee would suffer aggravation of an existing condition if she were to continue working…. An illness or disability may correctly be said to be attributable to the employer even though the employer is free from all negligence or wrongdoing in connection therewith.

Even a pre-existing health condition that is aggravated by the job is attributed to the Employer under *White. See also Ellis v. Iowa Dep't of Job Serv.*, 285 N.W.2d 153, 156-57 (Iowa 1979) (claimant's showing that Christmas tree would aggravate her pre-existing allergies was sufficient to constitute a "quit" that was attributable to her employer); *Rooney v. Employment Appeal Bd*., 448 N.W.2d 313, 315-16 (Iowa 1989)(noting that a recovering alcoholic who terminates employment with bar and liquor store may do so without disqualifying himself for unemployment benefits to the extent that the employment is found to have "aggravated" his condition). At the time the Claimant quit, the Employer had already informed her it was no longer holding her position and that she could apply for long term disability, but if she did not qualify for long term disability she would be terminated. She was told that if she went on long term disability she would not be guaranteed a position upon her return. The possibility of long term disability was the Claimant's only option other than quitting. Under these circumstances we find the Claimant satisfied all the conditions of quitting over a health condition aggravated by the employment. 871 IAC 24.26(6)(b); 1 E. Coke, *Commentarie upon Littleton* §319 (1628)("Quod vanum et inutile est, lex non requirit."); Bouvier's law Dictionary, p. 2161 (8th. Ed. 1914) c.f. *Nora Springs Co-op. Co. v. Brandau*, 247 N.W.2d 744 (Iowa, 1976)(notice of waiver not required since pointless) Brandenburg v. Carmichael, 192 Iowa 694, 704, 185 N.W. 486, 490 (1921)(citing *Smith v. McLean*, 24 Iowa 322, 326)(law does not require "vain and useless labor"); *Porazil v. IWD*, 2003 WL 22016794, No. 3-408 (Iowa Ct. App. Aug. 27, 2003)(requiring claimant to work to offer services where claimant was already fired would be "erroneous and unreasonable").

We thus allow benefits as did the Administrative Law Judge but on a quit theory as set out above.

Finally, solely for the edification of the parties, we point out that "[a] finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States." Iowa Code §96.6(4). This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise including on worker's compensation or disability insurance proceedings.

_____
Ashley R. Koopmans

_____
James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge and disqualify for quitting without good cause attributable to the Employer.

_____
Kim D. Schmett

RRA/fnv