

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

GARY C BOURQUE

Claimant,

and

HEARTLAND EXPRESS INC OF IA

Employer.

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HEARING NUMBER: 15B-UI-11317

**EMPLOYMENT APPEAL BOARD
DECISION AFTER GRANTED REHEARING**

NOTICE

THIS DECISION BECOMES FINAL unless a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

SECTION: 96.5-1, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant filed an application for rehearing on the above-listed matter. After consideration of the arguments made on rehearing, the Board is now ready to issue its decision.

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 it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The first paragraph of the Administrative Law Judge's findings of fact are adopted by the board as its own, with the modification of replacing the word "garnishing" with "withholding a portion of."

REASONING AND CONCLUSIONS OF LAW:

Legal Standards: This case involves a voluntary quit. Iowa Code Section 96.5(1) states:

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.

Under Iowa Administrative Code 871-24.26:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

...

24.26(4) The claimant left due to intolerable or detrimental working conditions.

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.* Where multiple reasons for the quit, which are attributable to the employment, are presented the agency must "consider that all the reasons combined may constitute good cause for an employee to quit, if the reasons are attributable to the employer". *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989)(citing *Taylor v. Iowa Department of Job Service*, 362 N.W.2d 534 (Iowa 1985)). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)("The good cause attributable to the employer need not be based upon a fault or wrong of such employer."). Good cause may be attributable to "the employment itself" rather than the employer personally and still satisfy the requirements of the Act. *E.g. Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956).

Where an employee quits because of allegedly illegal working conditions, the reasonable belief standard applies. "Under the reasonable belief standard, it is not necessary to prove the employer violated the law, only that it was reasonable for the employee to believe so." *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993). The question of good faith must be measured by an objective standard. The "key question is what a reasonable person would have believed under the circumstances " and thus "the proper inquiry is whether a person of reasonable prudence would believe, under the circumstances faced by [Claimant], that improper or illegal activities were occurring at [Employer] that necessitated his quitting." *O'Brien* at 662; *accord Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988)(misconduct case).

"[A] notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." *Hy Vee v. Employment Appeal Board*, 710 N.W.2d 1, 5 (Iowa 2005).

B: Good Cause: Iowa Code Chapter 91A states:

§91A.3(1). An employer shall pay all wages due its employees, less any lawful deductions specified in section 91A.5 , at least in monthly, semimonthly, or biweekly installments on regular paydays which are at consistent intervals from each other and which are designated in advance by the employer. ...

...

§91A.5 Deductions from wages.

1. An employer shall not withhold or divert any portion of an employee's wages unless:
 - a. The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction; or
 - b. The employer has written authorization from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.

...

§91A.7 Wage disputes.

If there is a dispute between an employer and employee concerning the amount of wages or expense reimbursement due, the employer shall, without condition and pursuant to section 91A.3, pay all wages conceded to be due and reimburse all expenses conceded to be due, less any lawful deductions specified in section 91A.5. Payment of wages or reimbursement of expenses under this section shall not relieve the employer of any liability for the balance of wages or expenses claimed by the employee.

Reading these provisions together, an employer may not divert wages to pay a debt, other than one over a wage dispute, or if specifically authorized by some other law. Thus in *Condon Auto Sales & Service v. Crick*, 604 N.W.2d 587 (Iowa 1999) the employer withheld part of wages to account for monthly draws made by the worker in excess of his earned wage. The Iowa Supreme Court found this was not permitted. Since this set-off was not specifically permitted by some other statute, it was prohibited unless it related somehow to a dispute over the amount of wage. "There is no state or federal law which permits an employer to set off its claims against employees' wages. Moreover, the doctrine of setoff is an incident of a judicial proceeding, and is generally accomplished only by court action." *Condon* at p. 597. Although the Administrative Law Judge here described the Employer's action as a garnishment, we see no such order of garnishment in the record. It is simply a self-help setoff unilaterally applied by the Employer rather than an order of the court.

The employer in *Condon* claimed that it had a legitimate contract claim against the employee, and indeed it eventually won a verdict on this claim. The Court acknowledged this but also found that "Condon's breach of contract claim for excessive draws did not constitute a 'dispute . . . concerning the amount of wages . . . due' under section 91A.7." *Condon* at 596. The Court was very clear that "[t]he purpose of the Act would be seriously undermined if an employer could generate a wage dispute under section 91A.7 and withhold an employee's undisputed wages by asserting a claim separate from its obligation to pay wages." *Id.* at 597.

We know of no law specifically permitting the recovery of a traffic ticket from a driver's wages. Moreover, the record does not disclose "written authorization from the employee to so deduct for any lawful purpose accruing to the benefit of the employee..." Indeed, even if such a written authorization appeared, it would not be for something "accruing to the benefit of the employee..." See generally *Ferezy v. Wells Fargo Bank*, 755 F. Supp. 1010 (N.D. Iowa 2010)(analyzing when a withholding accrues to the employee's benefit). Although not an issue beyond all doubt, in this unemployment matter the Claimant need not show absolutely that a violation occurred, nor do we necessarily so find. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993). But we do find that the Claimant's complaint about the withholding is a reasonable one given the requirements of Iowa Code chapter 91A, and the interpretation of these in *Condon*.

Here the reason for the Claimant's quit is enhanced by the fact that the ticket was written to the Employer. Because of this, the Claimant had no opportunity to contest the ticket in court, and yet he was being required to pay for it. We conclude, at a minimum, that "a person of reasonable prudence would believe, under the circumstances faced by [Claimant], that improper or illegal activities were occurring at [Employer] that necessitated his quitting." *O'Brien* at 662. As for notice, the Claimant clearly brought to the Employer his objections about having his pay taken to pay the ticket, and under *Hy Vee* no additional notice is required in a case of this sort. Benefits are allowed.

For the edification of the parties, we note 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). Thus our opinion regarding chapter 91A is not binding except in this unemployment matter.

DECISION:

The administrative law judge's decision dated November 24, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit for good cause attributable to the Employer. The overpayment entered against the Claimant in the amount of \$1,956 is vacated and set aside.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv

DATED AND MAILED _____

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