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

HAROLD D HOUSTON	:	
	:	**HEARING NUMBER:** 11B-UI-02605
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
VOLT MANAGEMENT CORP	:	
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 ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Harold Houston (Claimant) worked for Kelly Services on assignment to EDS. (Tran at p. 2). In the summer of 2009 Kelly Services lost the contract at EDS and Volt Management Corp. (Employer) took over the contract. (Tran at p. 2-3). When the Employer took over the EDS contract, the Claimant continued to work at EDS but then worked for the employer. (Tran at p. 2-3). The Claimant worked for the Employer from July 20, 2009 until he resigned on December 14, 2009. (Tran at p. 3; p. 8).

After starting for the Employer the Claimant was repeatedly shorted on his paycheck. (Tran at p. 3; p. 4; p. 5-6; p. 8; p. 9; p. 11). At the time of hearing the Employer still owed the Claimant back wages. (Tran at p. 3; p. 5; p. 6). The Claimant did speak with his manager at EDS about the problem, but he never received the lost wages. (Tran at p. 4-5). The Claimant was not the only one having such problems. (Tran at p. 7-8). After his repeated problems the Claimant chose to resign over the issue on December 14, 2009. (Tran at p. 3).

REASONING AND CONCLUSIONS OF LAW:

A. Background: 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 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).

B: Good Cause: Iowa Code §91A.3 states:

> 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. However, if any of these wages due its employees are determined on a commission basis, the employer may, upon agreement with the employee, pay only a credit against such wages. If such credit is paid, the employer shall, at regular intervals, pay any difference between a credit paid against wages determined on a commission basis and such wages actually earned on a

commission basis. These regular intervals shall not be

> separated by more than twelve months. A regular payday shall not be more than twelve days, excluding Sundays and legal holidays, after the end of the period in which the wages were earned. An employer and employee may, upon written agreement which shall be maintained as a record, vary the provisions of this subsection.

The evidence shows that the Employer was having difficulty paying wages for all the time worked. The Claimant had outstanding unpaid wages even at the time of hearing. The Claimant believed that he was in a situation were he couldn't count on receiving all his pay for hours worked. The Employer asserted, in hindsight, that the problem had been resolved by the time the Claimant quit. Yet the Claimant remained unpaid and had no way of knowing if the problem could recur. He had unpaid wages and faced the real possibility that he would have even more in the future. He had an objective good faith basis for his concerns. We do not find that Chapter 91A has been violated, but only that the question is close enough that a person of reasonable prudence would believe that "improper or illegal activities were occurring at [Employer] that necessitated [his] quitting." *O'Brien* at 662.

C. Notice of Intent To Quit: "[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); *see also Barber v. EAB,* No. 0-820, slip op at 9 (Iowa App. 11/24/2010)("a notice of intent to quit is not required when the employee quits due to a change in the contract of hire...."). The ruling in *Hy Vee* thus dispenses with the requirement that the Claimant tell the Employer he would quit over the paycheck issue.

D. Notice of Intolerable Conditions: It is not clear how far the ruling in *Hy Vee* sweeps. Clearly, the Claimant need not give notice of an intent to quit. Left unanswered, however, is whether the Claimant needs to give notice of the intolerable conditions themselves. In other words, is a Claimant still required to inform the employer that something is wrong even though the Claimant need not threaten to quit over it?

The case will come, no doubt, when we will have to answer this question. This is not that case. On this record, even if we were to conclude the Claimant had an obligation to place the Employer on notice, we find that the Claimant has satisfied any reasonable requirement of notice. The Employer certainly knew its payday practices, and knew it was having problems. Furthermore the Claimant told the onsite supervisor who handled the physical process of reporting hours and related issues. This was sufficient to discharge any "notice of problem" duty, if there even is one.

DECISION:

The administrative law judge's decision dated April 4, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit for good cause attributable to the employer. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside.

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John A. Peno

_____
Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

RRA/fnv