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

SUSAN K DAVIS	:	
Claimant,	:	**HEARING NUMBER:** 07B-UI-09404
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
ANKENY HEALTH CARE ENTERPRISES LLC	:	
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 DENIED

The employer 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:

Susan Davis (Claimant) worked for Ankeny Healthcare Enterprises (Employer) from December 6, 2006 until the date of her quit on July 24, 2007. (Tran at p. 1-2; p. 19-20; Ex. A). The Claimant was hired on a full-time basis. (Tran at p. 2; p. 20). The Employer requires salaried employees to work a minimum of forty-hours per week. (Tran at p. 20). The Claimant's supervisor was Administrator Crystal Hodak. (Tran at p. 1; p. 5). As part of her job, Ms. Hodak would assure that the Claimant did her job. (Tran at p. 5). The Claimant has not proved by a greater weight of the evidence that Ms. Hodak shunned the Claimant or acted in a threatening or intimidating manner towards the Claimant. (Tran at p. 23-24). The Claimant has also failed to prove that MDS coordinator Gini Underwood threw

a file at the Claimant or told the Claimant that Ms. Underwood would get the Claimant fired. (Tran at p. 29-30; p. 31).

On June 25, 2007 the Employer notified the Claimant that she would be working on an hourly basis rather than as a salaried employee. (Tran at p. 2; Ex. A). This did not adversely affect the Claimant's wage or her vacation pay. (Tran at p. 16; p. 21-23 see also p. 36). The Claimant was not upset about this change. (Tran at p. 27).

On July 10, 2007 the Claimant was given a document setting out her deficiencies. (Tran at p. 17; Ex. A). Ms. Hodak spoke with the Claimant about mistakes the Claimant had been making. (Tran at p. 27). The Claimant thought this was unfair criticism and decided to quit on the spot. (Tran at p. 27; Ex. A). The Claimant later changed this to two-week notice and left employment on July 24. (Tran at p. 2; p. 7; p. 27; Ex. A). The Claimant quit because she was dissatisfied with the work environment. (Tran at p. 2; p. 9; p. 37; p. 34-35; Ex. A)("my resignation was due to a Hostile Work Environment…). The change in the Claimant's status to hourly rather than salaried did not make a difference in the decision to quit. (See Tran at p. 2; p. 9; p. 27; p. 34-35; Ex. A).

In assessing the evidence we have largely agreed with the Administrative Law Judge. Specifically the Administrative Law Judge ruled the "alleged harassment is not found credible." We concur with this assessment. The Employer supplied convincing first-hand evidence that undermined the Claimant's assertion of a harassing environment. The Claimant's testimony on cross-examination also did not instill confidence in her credibility. She asserts dates, then backs off them, asserts a write-up and then calls it oral, and generally is evasive. (E.g. Tran at p. 10-11). The Claimant has failed to prove by a greater weight of the evidence that she was subjected to a detrimental, or even unfair, working environment. The Claimant has failed to prove good cause for her decision to quit.

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(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.
>
> …

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

In addition, Iowa Administrative Code 871—24.25 provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5… . The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
> …
> 24.25(21) The claimant left because of dissatisfaction with the work environment.
> 24.25(22) The claimant left because of a personality conflict with the supervisor.
> …
> (28) The claimant left after being reprimanded.
> …
> (33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

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).

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. The test is whether a reasonable

person would have quit under

the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988); O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). In Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court ruled that a 25 percent to 35 percent reduction in wage was, as a matter of law, a substantial change in the contract of hire. The Court in Dehmel cited cases from other jurisdictions that had held wage reductions ranging from 15 percent to 26 percent were substantial. Id. at 703. The Court in Dehmel pointed out that the determination is subject to no "talismatic percentage figure" but must be judged in consideration of the individual case. Dehmel at 703. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990). The touchstone in deciding whether a delay in resigning will disqualify the Claimant from benefits is whether his "conduct indicates he accepted the changed in his contract of hire." Olson at 868.

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).

Change in Contract of Hire:

We recognize that "all the reasons [for a quit] 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). Thus we do agree with the Administrative Law Judge that the Claimant need only prove one cause of the quit was "good cause attributable to the employer" in order to prevail. The issue is, however, whether the "reason" must be a determining cause or whether the "reason" need only have contributed in any way to the decision to quit. The difference is not a small one. A determining cause is any one of several possible causes without which a result would not occur. If two people push a weight which neither could push alone then both are determining causes of the motion. Each is required for the effect so each is a determining cause. Contrasted with this is a factor which makes no difference because it was not necessary to cause the result and nor was it sufficient to produce the result. If a large person and a small person push a weight which the large person could push alone and the small person could not then the pushing of the small person, though it might make things easier, is not a determining cause of the motion of the weight. It is extraneous factor in the result. In decision-making terms a determining cause is a "reason" for the decision and an extraneous factor is but "icing on the cake."

So the legal question is this: if the determining causes of a claimant's quit do not, even in the aggregate, constitute good cause does the Claimant receive benefits if an extraneous factor to the decision to quit would constitute good cause? We think not. An extraneous factor is not, in the ordinary sense of the word, any kind of "cause" of an event and so cannot be "good cause". An event that would occur with or without a given factor is not in fact "caused" by that event. The usual meaning of "cause" is "determining cause."

The evidence does not establish that the Claimant would have quit based on the change in her status alone. The Claimant's 5-page letter detailing her resignation and its causes makes very little of the change in the status. The Claimant was not upset upon learning of the change to hourly status. Also the Claimant

continued to work for a couple weeks after being told of the change. The precipitating cause of the quit was her reprimand over issues the Claimant found "ridiculous." (Ex. A). The change in status would not by itself have caused the quit. In addition, the evidence establishes that the Claimant would have quit even without the change in status. Thus the change in status is not a cause of the quit, if it was even a factor at all, and for that reason alone should not be included in the decision of whether good cause has been proved.

Even ignoring the question of cause, however, the supposed difference between hourly and salaried employees does not constitute a material change in the Claimant's contract of hire. The Claimant was hired to work full-time (40 hours a week). It is true that in order to fall within certain exceptions of the Fair Labor Standards Act a salaried employee must be paid even if they do not work the full 40 hours. But this does not mean they are not expected to give the employer the full time for which they contract. This is what it means when someone signs on to do a full-time job. The effect of being salaried is that the Employer may not dock pay as a form of discipline if the employee does not work the contracted-for 40 hours. But the employer can discipline the employee otherwise – even fire them. The employer can even require salaried employees to make up time in subsequent weeks. See Renfro v. Indiana Michigan Power Co., 370 F.3d 512, 516 (6th Cir. 2004)("an employer may require exempt salaried employees to make up for time missed from work due to personal business"). The change between not being able to dock pay as a means of disciplining (salaried employee) and being able to dock pay as a means of discipline (hourly employee) is, on this record, not a substantial change in the contract of hire. The key provisions of the hours, the shift, the benefits, vacation time, and the pay have not been shown to be any different. The status change is not by itself good cause for the quit.

Detrimental Work Conditions: As noted above we simply do not find credible evidence to support the Claimant's allegations of detrimental working conditions. Although the Claimant was given oral correction and other discipline nothing was done that was out of the ordinary for such things. The reasons for the discipline have not been shown to be unreasonable and certainly the means of the correction have not been shown to be harassing in nature. In short, the proof of any significantly detrimental working conditions is lacking.

Finally, we hold that the asserted detrimental work conditions and status change reasons for the quit have not been shown to, even in the aggregate, constitute good cause for the Claimant's decision to quit.

DECISION:

The administrative law judge's decision dated October 23, 2007 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit but not for good cause attributable to the employer. Accordingly, she 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. See, Iowa Code section 96.5(1)"g".

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

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Elizabeth L. Seiser

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Mary Ann Spicer

RRA/fnv

DISSENTING OPINION OF JOHN A. PENO:

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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John A. Peno

RRA/fnv