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

CHELSEA G PYLAND	:	
	:	**HEARING NUMBER:** 14B-UI-06027
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
J & K ANDERSEN 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: 96.5-1

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:

Chelsea Pyland was employed by J & K Andersen, Inc. as a full-time FedEx delivery driver from March 2013 until April 15, 2014, when she voluntarily quit the employment to escape her abusive husband, Ronny Pyland, who also worked for the Employer as a FedEx delivery driver. Mr. Pyland's mother also worked for J & K Andersen, Inc. as a full-time FedEx delivery driver. Mr. Pyland had directed physical, verbal, and emotional abuse at Ms. Pyland. Mr. Pyland's abuse reached a level in April 15, 2014 where Ms. Pyland and her family concluded she had to leave the state of Iowa to escape imminent harm to herself and the couple's daughter. The Claimant quit without notice to the Employer. The Employer was not aware at any point that the Claimant had been subjected to physical abuse by her husband.

On April 15, 2014 Ms. Pyland's family came to collect her from her rural home while Mr. Pyland was away. That evening Ms. Pyland notified Kathy Andersen, one of the co-owners of J & K Andersen, of her need to flee the state to escape Mr. Pyland's abuse and that she would not be returning to the employment.

REASONING AND CONCLUSIONS OF LAW:

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).

First of all, it is notable that no special rule applies to domestic situations. Just at first blush the behavior of the Claimant's husband is simply not attributable to the employment. Over the years efforts have been made to amend the Employment Security Law to qualify claimants who quit over domestic abuse, stalking, or similar safety concerns. 17 Iowa Admin. Bull ARC 8571A (12/16/1998); SSB 3044 (82nd GA 2008). The efforts have not passed, and until they do the agency and the courts remain bound by the current law. The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 in section 2003(a) provides additional money to states if they adopt a statutory provision that will not disqualify if the claimant quits for a "compelling family reason" including "Domestic violence, … which causes the individual reasonably to believe that such individual's continued employment would jeopardize the safety of the individual…" The change is not mandatory, rather the law provides an incentive for making the change. While Iowa has a provision qualifying if a quit is for compelling personal reasons, the claimant must return within 10 working days for that provision to apply. Iowa Code §96.5(f). This further bolsters the idea that a more open ended compelling reasons quit, like one over personal domestic situations, simply has not been adopted in Iowa. Naturally, if the usual unemployment law mandated allowance of benefits in the domestic abuse setting there would be no need for the federal provision. Notably in many states that enacted such a change – precisely because the usual unemployment principles do not result in the allowance of benefits – the benefits paid to the victim are chargeable to the fund, not the employer. E.g. Kan. Stat. Ann. § 44-706(a)(12); A.R.S. §23-771; Ca. U.I. Code §§ 1030, 1032 & 1256; Colo. Rev. Stat. Ann. § 8-73-108(4)(r); Ind. Code §§ 22-4-15-1(1)(c)(8), 22-4-15-1(1)(e), 22-4-15-2(e) & 5-26.5-2-2 & 31-9-2-42; Mont. Code Ann. § 39-51-2111.

Here that is simply not an option as Iowa has not adopted any such change. If such a rule is imposed via interpretation the money by law must be charged to the base period employers, who fundamentally had nothing to do with the situation and had no chance to do anything about the situation.

The current law, then, is that there must be a connection between the quit and the employment before the Petitioner can quit and charge the employer for her benefits. Just having a domestic partner who receives pay from the same employer, or indeed who knows where you work, is not sufficient. Were it otherwise the fact that a potential assailant could wait in the parking lot, or in cases of workplaces open to the public, come into the job site would automatically qualify a victim for unemployment benefits chargeable to a party having nothing at all to do with the situation. While such claimants, and this one included, are sympathetic figures, the law requires that the quit be based on conditions existing at the work site in order for the quit to be attributable to the employment.

Lack Of Notice: Prior to 2005, in order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee was required to provide his employer with two kinds of notice, namely, informing the employer about the conditions the employee believes are intolerable or detrimental and that the employee intends to quit employment unless the conditions are corrected. The employer must be allowed a chance to correct those conditions before the employee takes the drastic step of quitting employment. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402 (Iowa 1993), *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa App. 1996). Under the rule prior to 2005, "[n]ot only must an employee give notice to an employer about allegedly unsafe working conditions, he or she must notify the employer of his or her intention to quit if the conditions are not alleviated." *Swanson*, 554 N.W.2d at 297 (case involving assault by co-worker).

The second required notice, the "notice of intent to quit" requirement, was reversed in *Hy Vee v. Employment Appeal Board*, 710 N.W.2d 1 (Iowa 2005). In that case the Board had awarded benefits and the Employer appealed. The Claimant there quit because of her belief that she was the victim of harassment. The "issu[e] presented" before the Court was "whether [claimant] was required, prior to quitting, to inform her employer that she would quit if the conditions were not improved." *Hy Vee* at 3. The Supreme Court affirmed the Board and held "that a **notice of intent to quit** is not required when the employee quits due to intolerable or detrimental working conditions." *Hy Vee* at 5 (emphasis added). The *Hy Vee* opinion did not, however, specifically address whether the employee must at least tell the Employer that there was a problem before the employee quit. In *Hy Vee* the Court affirmed the Board's factual finding that the claimant "had complained to Hy-Vee regarding unfair treatment, which she believed was because of her race." *Hy Vee* at 3. Thus in *Hy Vee* the Court was not presented with a claimant who failed to let the employer know that detrimental conditions existed. The only omission of the *Hy Vee* claimant was that she failed to inform the employer that she intended to quit if the situation was not remedied. It was this "intent to quit" notice that the Court held to be unnecessary. Thus while it is clear that an employee must not give "notice of intent to quit" it remains unanswered whether the employee must give at least some notice that there was a problem. We note that while this Administrative Law Judge found no notice must be given, we are aware that the Administrative Law Judges are by no means in agreement on that point. *E.g. Weir v. Iowa Spring Manufacturing & Sales, 13A-UI-13019* (Judge Steve Wise disallows to claimant who quit without notice because abusive boyfriend also worked at Employer).

On one hand, there is a rule requiring an employee to give notice of conditions and this same rule requires the giving notice of an intent to quit. This rule refers only to health related quits and does not address quits based on adverse health conditions. By analogy to *Hy Vee*, the argument would run that neither the notice of intent to quit nor the notice of potentially illegal conditions is required except in cases of health-related quits.

The better rule is that even though a claimant need not give notice of an intent to quit the claimant must at least take reasonable steps to inform the employer that there is a problem. This rule is based on the statutory provision that a claimant is qualified for benefits only if there is "good cause" for a quit. A requirement that a claimant at least tell an employer about the problem recognizes that a problem that is unknown to an employer cannot in fairness be "attributable" to the employment at least where the claimant has an opportunity to inform the employer of the problem. Where the claimant knows about a problem, knows that she may complain about it, and still does nothing then the resultant quit is as attributable to the claimant as any inaction by the employer. Indeed, where a claimant could reasonably expect that the employer would in fact take action to remedy an unknown hazard or illegality and the claimant refused to complain about the situation one could *not* say that "improper or illegal activities were occurring at [Employer] that necessitated his quitting." *O'Brien* at 662 (emphasis added).

Policy supports this rule of reasonable notice in the unemployment context. In construing the Employment Security Law it is necessary to "strike a proper balance between the underlying policy of the Iowa Employment Security Law, which is to provide benefits for 'persons unemployed through no fault of their own,' Iowa Code Sec. 96.2, and fundamental fairness to the employer, who must ultimately shoulder the financial burden of any benefits paid. See Iowa Code Sec. 96.7." *White v. Employment Appeal Board* 487 N.W.2d 342, 345 (Iowa 1992). This balancing is thrown too far in favor of the employee by the rule applied by the Administrative Law Judge. For example, suppose an employer has a well-established and consistently followed anti-harassment policy that is known to the claimant. Suppose, as in a fact pattern actually seen by the Board, the claimant supervises his former girlfriend. At work, when they are entirely alone in the empty store, the claimant is called names and struck by his former girlfriend. He tells no one, and quits. If we assume that the employer in question had a consistently enforced harassment policy, then this quit cannot be considered attributable to anything about the employment. Yet a strict "no notice" rule would allow – and encourage - just such inaction by claimants. This is contrary to policy and to the balancing of *White*.

Finally a close reading of *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993) reveals that "at issue in [that] case are Iowa Administrative Code sections [871]-4.26(1)(change in contract of hire) and (4)(where claimant left due to intolerable or detrimental working conditions)." *Cobb* at 448. Thus the rule of *Cobb* requiring notice of the work related problem was developed in the context of a case, like this one and like *Hy Vee*, involving allegedly detrimental working conditions. Thus *Hy Vee* cannot be distinguished from *Cobb* based upon the rule interpreted. The only way to read the two cases that preserves them both is that *Hy Vee* overrules the *Swanson* requirement of "notice of an intent to quit" in detrimental working conditions, but leaves intact the *Cobb* requirement that the employee give notice of the conditions that the employee objects to.

The underlying policy of the Employment Security Law, a close reading of precedent, and the basic idea of a quit being attributable to the employment require that reasonable notice of adverse or illegal condition be given to an employer before benefits can be allowed following a quit. Here the only notice given by the Claimant was at the time she quit. In these contours the case is very much like *Cobb*. There the employer was aware that Mr. Cobb had been injured and had certain work restrictions. Mr. Cobb

then quit without ever informing his employer that he was being asked to exceed his work restriction by his job. The Supreme Court rejected the argument that the employer was "on notice". The Court specifically dealt with the idea that the quit itself was adequate notice:

> Notification at the time of the quit comes too late to allow the employer to remedy the problem. Notice then is after the fact, and serves no more good than it would after unemployment benefits are sought.

Cobb at 448. The case at bar is indistinguishable. The Petitioner's first notice to the Employer that she was experiencing abuse was in the quit itself. This was not "before quitting", 871 IAC 24.26(6), and therefore "comes too late." *Cobb* at 448. For this reason alone the quit is disqualifying.

Conditions At Work: Even if one reads *Hy Vee* as meaning an employee can quit without a word to the Employer about a situation the Employer has no way of knowing about, still this does not help the Claimant. Here the Claimant had decided to move. She could not do her job and be out of state, so her decision to move meant that she had to quit. Naturally, the Claimant did not give more notice of quitting for the simple facts that she wanted to leave without any chance of her husband learning about it, and that even had the Employer done everything possible to assure that no threat existed at work still the Claimant would quit so she could move out of state just to be safe. She thus quit because of the need to move, she moved because of the threat that existed even outside work, and thus the quit was not tied to conditions existing at work. This is because no matter what the Employer did there was always the issue of meeting in the parking lot, at the front door, at deliveries, etc. Also so long as she lived in the same place she felt she was in danger. But this can happen wherever a claimant works and no matter whom the husband worked for. Without some amendment to the law, the Code cannot be stretched so far that being in an abusive relationship makes quitting, in nearly every case, the Employer's responsibility to pay for. This is why other states have had to deal with the situation with a statutory change that Iowa has just not adopted. *C.f. Pagan v. Board of Review,* 687 A.2d 328, 296 N.J.Super. 539 (N.J. Super. A.D., 1997)(Not good cause attributable to employment where victim of domestic violence quit after being constantly called at work and being forced to move). In short the Claimant quit because she was compelled to move, and thus the quit was not over detrimental conditions particular to the job site, but rather because continuing to reside in Iowa was detrimental to the Claimant. Thus, at base, the quit was not caused by conditions *at work*. For this independent reason we disqualify as well. *See Wolf's v. Iowa Employment Sec. Commission*, 59 N.W.2d 216, 244 Iowa 999 (Iowa, 1953)(Leaving state of Iowa to live in Arizona because climate was unhealthy for claimant was disqualifying).

No Repayment Required:

Finally, 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.

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.

DECISION:

The administrative law judge's decision dated July 11, 2014 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 as 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".

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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John M. Priester

DISSENTING OPINION OF ASHLEY KOOPMANS:

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. I note that in the case of *Ames v. Employment Appeal Boar*d, 439 N.W.2d 669 (Iowa 1989) the Court was faced with employees who refused to cross a picket line because of threats of violence. The Court found that such threats could make the quit involuntary, and not disqualifying, even though not attributable to the employer. I would apply the same rule here and allow benefits to the Claimant.

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Ashley R. Koopmans

RRA/fnv