**REASONING AND CONCLUSIONS OF LAW:**

A 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 an employee quits because of allegedly detrimental working conditions the reasonable belief standard applies. Under these standards all that need be established is that a reasonable person would have felt compelled to resign by the conditions at the Employer. 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 the circumstances at the employer "necessitated [her] 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: In our judgment the Claimant's testimony about Mr. Hartman's behavior is credible and describes a job environment that a reasonable person would find adequate cause for quitting. We conclude that a person of reasonable prudence would believe that the Claimant would be subjected to further objectionable conduct from Mr. Hartman in the future. This is an intolerable working condition.

This case is redolent of, except in a more disturbing form, the case of *McCunn v. EAB*, 451 N.W.2d 510 (Iowa App. 1989). There the claimant had unclear job requirements, had been given conflicting instructions from his two supervisors, and quit after being reprimanded. Here the Claimant was working with inadequate equipment and, critically, was commonly subjected to demeaning and intimidating verbal criticism accompanied by physical displays of anger, over her inability to keep up with the demanding requirements. The Iowa Court of Appeals found that the claimant in *McCunn* had good cause for quitting and we find that the Claimant here has proven even more clearly than in *McCunn*, good cause attributable

to the Employer for her quit.

We point out that we have not taken into account the stapler allegations when deciding whether the Claimant had good cause for quitting. The incident clearly took place after the quit.

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). The ruling in *Hy Vee* thus dispenses with the requirement that the Claimant tell the Employer she would quit if Mr. Hartman's behavior continued.

D. Notice of Detrimental 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 of the detrimental conditions, we find that the Claimant has satisfied any reasonable requirement of notice.

We inform our consideration of the duty to notify of intolerable conditions by precedent. A lynchpin to this analysis is *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993). In that case Mr. O'Brien quit because of alleged illegal and intolerable working conditions. In its ruling the Court applied the holding from misconduct cases that 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 O'Brien, that improper or illegal activities were occurring at Ballstaedt Ford that necessitated his quitting." *Id.* It is possible to read *Hy Vee* as allowing the argument that if an employer is unaware there is even a problem, then a quit over that problem is not "necessitated" as described by *O'Brien*. After all, the argument would run, the Employer might remedy the problem if it knew about it, and no quit needs to have taken place. But if the employer is itself creating the environment it is a different story. Thus in *O'Brien* where the employer was allegedly knowingly violating the law, it would have been pointless to impose a "notice to the employer" requirement. In short, where the employer already knows that he is doing something that could create a detrimental working condition the claimant doesn't have to give the employer notice of this fact.

When dealing with business entities it is always difficult to ascertain just when knowledge of certain individuals can be imputed to the "employer". While ultimately we must fall back on the concept of a "reasonable opportunity" we do note that surely even under *Suluki-Cobb* a claimant can place the employer on notice without writing a letter to the chairman of the board. We have no opportunity here, however, to explore the limits of what constitutes notice to the employer since in this case the owner is the one alleged to have taken the action that caused the Claimant to quit. The owner was aware of his own actions. Any reasonable person would be aware that detrimental working conditions were a likely result of the actions. It would be futile to require the Claimant to inform the owner of what, by an objective standard, the Employer already should have known.

E. Credibility: We are mindful that the Administrative Law Judge in this case weighed the evidence differently than we do. We are equally mindful that the ultimate decision on whom to believe is ours to make. *Kruse v. EAB*, 2001 WL 26192 (Iowa App. 1/10/01); *Richers v. Iowa Dept. of Job Service*, 479 N.W.2d 308, 311 (Iowa 1991). We grant deference to the Administrative Law Judge's decisions regarding credibility, although this deference is lessened where, as here, the hearing took place by telephone. Also the Administrative Law Judge did not explain his decision on whom to believe. The Administrative Law Judge is not by any means required to explain credibility determinations, but we do grant *somewhat* less deference to such determinations when they are not explained.

Despite the Administrative Law Judge failure to explain his credibility call, we can see the point. The Employer produced multiple witnesses who seemed to support its position. The Claimant had only herself. The rule is, however, that "witnesses are weighed not counted." *Black Law Dictionary, Legal Maxims*, p. 1674 (7th Ed. 1999)("ponderantur testes, non numerantur"). In weighing the testimony we must take into account possible interests of the witnesses. Both the Claimant and Mr. Hartman have their own self-interest. The Claimant has benefits at stake, and the Employer likewise has to have concern for its experience rating. Truth be told, neither party seems to have much financially at stake. The Claimant filed her claim in June of 2009 and so this Employer is not in her base period. Thus when the Administrative Law Judge remanded for an eligibility determination based on other employment in the base period, the outcome for this Claimant should have been negligible. Further the Claimant appears to have secured more work so the interest of either party is contingent upon another loss of work by the Claimant sometime between June and December of this year. Nevertheless, parties often do not understand the intricacies of benefits law, and so we do consider that each party felt they had a monetary interest in the outcome of this case.

More importantly to the Employer the allegations of the Claimant are of the sort of conduct a person would naturally not wish to admit. As for the corroborating testimony, we cannot ignore it when witnesses work for the very individual alleged to have an unpredictable temper. Ms. Berk, meanwhile, is married to the owner and this can obviously affect the reliability of testimony. (Tran at p. 21). While Mr. Church did not work for the Employer, by the same token he had a more limited exposure to the job site, and a decreased motivation to pay attention to the interaction of the personnel in the office. Still, the multiple witnesses in support of the Employer force us to probe closely the Claimant's version of events. Her story survives that probe. It is consistent and, as set forth in the testimony and the exhibit, reasonably detailed. We detect no guile in how the Claimant told her story. In short, we believe her and have found accordingly.

**DECISION:**

The administrative law judge's decision dated November 16, 2009 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

_____
Monique F. Kuester

RRA/fnv