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

JAY J HESS

Claimant

and

PRIES ENTERPRISES INC

Employer

HEARING NUMBER: 19BUI-06351

EMPLOYMENT APPEAL BOARD DECISION

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:

The first paragraph of the Administrative Law Judge's findings of fact, with the exception of the last two sentences, are adopted by the Board as its own. We find further the following.

When the workers worked a 10 hour shift they received another 10 minute break. Because of the heat necessarily generated by the aluminum extrusion process, the Employer cannot effectively cool the production area. The ovens at the end of the area where the Claimant did not work could get as hot as 1000 degrees Fahrenheit. At the end where the Claimant worked they would reach as hot as 200 degrees F. As a result, the temperature in the production area could get as hot as 105 degrees F. During the summer the Employer allowed workers to take time off without having the absence charged against them if the worker provided a medical excuse.

On the overnight of Saturday July 13 to July 14 the Claimant became very hot while at work. He quit that day because he no longer wanted to work in the heat at the Employer's facility. He was "wrung out" from the work. These conditions at the Employer had not significantly changed since the Claimant had begun working there in 2017. The Claimant quit on July 15. He gave the Employer no notice. He made no request for accommodation to deal with the heat. He hadn't discussed heat with the Employer in 2019.

REASONING AND CONCLUSIONS OF LAW:

A Detrimental Conditions Analysis: 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:
>
> …
> (2) The claimant left due to unsafe working conditions.
> …
> (4) The claimant left due to intolerable or detrimental working conditions.

Meanwhile it is not good cause for quitting if "[t]he claimant left because of dissatisfaction with the work environment." 81 IAC 24.25(21).

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 or detrimental 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). Good faith under this standard is not determined by the Claimant's subjective understanding. The question of good faith must be measured by an objective standard. Otherwise benefits might be paid to someone whose "behavior is in fact grounded upon some sincere but irrational belief." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988). 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).

We find that the Claimant has failed to prove that an objectively reasonable person in the Claimant's position would have quit over the working conditions. The concept of detrimental working conditions requires something other than the ordinary work conditions to justify the quit. Either the conditions must be illegal, or they must be something other than what is customary and expected for jobs of the type the claimant quits. It is simply not surprising that the job in a plant that manufactures extruded aluminum will be in hot conditions. The job environment in metal works is notoriously a hot one and very little can be done to effectively cool it, as the record showed here. Thus, the fact that the Claimant had to work in hot conditions, especially during the hot months, is not an *objectively* good cause for quitting. Many jobs are performed in necessarily difficult conditions, and if the workers know this at the time of hire then requiring the worker to do the job under ordinary, though unpleasant, conditions is not good cause. If we were to rule otherwise then outdoor workers could quit over the cold at any time, kitchen workers could quit over the ubiquitous heat at any time, nurses could quit over being around sick people etc.

We emphasize that if the cold becomes *dangerous* or if the heat becomes *dangerous* or if the nurse's employer is not following proper infection protocol that would be a different story. Then the work would be detrimental, not just unpleasant. Also, it would be different if the Claimant had had an express or implied promise of a temperature-controlled space at some time during the Claimant's employ. Then the Claimant might claim a change in contract of hire. But we have no dangerous level of heat proven, nor any broken promises proven. Instead this case is one where the Claimant quit because the Claimant objected to the normal working conditions for this job which was routinely performed in necessarily hot conditions. This is not detrimental working conditions, but rather a case where the Claimant "left because of dissatisfaction with the work environment." 871 IAC 26(4). Such quits are disqualifying. *C.f. Wolfe v. Iowa Unemployment Comp. Comm'n,* 232 Iowa 1254, 1257, 7 N.W.2d 799 (Iowa 1943)("although [Wolfe]'s work was hard, she was required to do no more than the average chambermaid throughout the country, and other chambermaids in said hotel").

B. Health Conditions Analysis: Quitting over health concerns is addressed by Iowa Administrative Code 871 IAC 24.26(6):

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

….
(6) b. Employment related separation. The claimant was compelled to leave employment because of an illness injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment, which caused or aggravated the illness,

> injury, allergy or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of the employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.
>
> In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The first step in satisfying this regulation is proving adequate health reasons to justify termination of employment. This the Claimant has not done. The Claimant has shown the work to be hot and difficult, but this is not enough. The Claimant simply has offered no medical proof – not even hearsay from a physician – describing a diagnosable condition. We have the Claimant's description of common physical effects from hard hot work, but nothing that can be described as injury or disease. The Claimant has not shown that the work was "injurious to the claimant's health" rather than physically demanding. Not all quits from physically demanding work will avoid disqualification.

The next step is proving that the health condition was aggravated by the work. In *White v. Employment Appeal Board*, 487 N.W.2d 342, 345 (Iowa 1992) the Supreme Court explained:

> We have held that an illness-induced quit is attributable to one's employer only under two circumstances. First, when the illness is either "caused or aggravated by circumstances associated with the employment," regardless of the employee's predisposition to succumb to the illness, … Second, when the employer effects a change in the employee's work environment such that the employee would suffer aggravation of an existing condition if she were to continue working…. An illness or disability may correctly be said to be attributable to the employer even though the employer is free from all negligence or wrongdoing in connection therewith.

Even a pre-existing health condition that is *aggravated* by the job is attributed to the Employer under *White*. *See Rooney v. Employment Appeal Bd*., 448 N.W.2d 313, 315-16 (Iowa 1989)(noting that a recovering alcoholic who terminates employment with bar and liquor store may do so without disqualifying himself for unemployment benefits to the extent that the employment is found to have "aggravated" his condition).

Here since the Claimant did not show any particular health condition that gave the Claimant an abnormal sensitivity to heat, exertion, etc., the Claimant cannot show that the health condition was aggravated by the working conditions. To be sure the Claimant showed the work was hard

to do, and could be grueling. But this is not the same as having an "illness" that was "aggravated by circumstances associated with the employment" as discussed in *White*. The Claimant has failed to prove a work-caused health condition or aggravation of a pre-existing health condition that necessitated the Claimant's quit.

Finally, the Claimant did not notify the Employer before quitting that he would quit if not accommodated. The Claimant did not give any notice that he would quit. The Claimant has failed to prove a medical condition adequate to justify quitting, has failed to prove aggravation of a condition, and failed to prove he satisfied the notice requirement. Any one of these reasons would be sufficient to defeat a claim of a nondisqualifying job-related health quit under rule 24.26(6)(b).

C. Other Complaints: This Claimant identified no other safety concerns as factoring in his decision to quit. Since the hearings were combined we have reviewed the record in Mary Hess' case. We would have found the safety concerns advanced by his wife, if they had also been asserted by the Claimant, as being inadequate for the reasons we set out in Mary's decision.

DECISION:

The administrative law judge's decision dated September 11, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit but not for good cause attributable to the employer. Accordingly, he 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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Kim D. Schmett

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Ashley R. Koopmans

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DISSENTING OPINION OF JAMES M. STROHMAN:

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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James M. Strohman

RRA/fnv