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

CHRISTINE A YOUNG Claimant, and CARGILL MEAT SOLUTIONS CORPORATION Employer.	:	HEARING NUMBER: 08B-UI-01690 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 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:

Christine Young worked as a full-time general laborer for Cargill Meat Solutions Corp. (Employer) from August 9, 2007 through the date of her quit on December 18, 2007. (Tran at p. 2; p. 4-5).

On December 14, the claimant had carpel tunnel surgery on her right hand. (Tran at p. 6; p. 8). The claimant was performing work with her left hand on December 18, 2008. (Tran at p. 6). This job accommodated her work restrictions of keeping her right hand clean, dry and quiet. (Tran at p. 6). The employer's nurse told the claimant that day that starting on Monday she would be working at

another job, wiping wet seals and the Claimant objected to this assignment. (Tran at p. 6). Although a glove was supplied for this job, in the Claimant's experience damage to the glove often occurred and the protection

was not good. (Tran at p. 6). The Claimant was not able to perform this job with her left hand. (Tran at p. 8-9). The Claimant told the nurse of her objections and fears of violating her doctor's orders. (Tran at p. 6). After the nurse told the claimant that she was not going to tell him what work she would do, they went to talk to a human resource representative. (Tran at p. 6).

Although the claimant asked that a union steward to be present during this discussion, the Employer denied this request. (Tran at p. 6; p. 9). During the discussion the Employer acted in a manner that was alarming to the Claimant including raising voices and blocking the door. (Tran at p. 6; p. 9). The Claimant reasonably believed that the Employer was insisting that she violate her work restrictions and that in so doing she would be risking infection to her hand that was just recently operated upon. (Tran at p. 6-9). The Claimant did not refuse to work so long as the work was within her physician's restrictions. (Tran at p. 6).

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 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 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: As we have found, the Claimant reasonably believed she was being asked to work outside her restrictions. Her testimony that the protection provided was inadequate to guard her hand just a few days after surgery is credible. Also we have found credible her testimony that she needed her dominant hand to perform the job. The evidence is clear that the Employer would brook no alternative to the Claimant going back to the objectionable duty. We conclude that a person of reasonable prudence in the Claimant's position would believe that she was being asked to work outside her restrictions and that as a result the conditions at the Employer "necessitated [her] 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). The ruling in Hy-Vee thus dispenses with the requirement that the Claimant tell the Employer she would quit if she were required to drive contrary to law.

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

We leave lengthy discussion to another day. Suffice it that 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. This is consistent with the familiar "constructive discharge" analysis that holds "conditions will not be considered intolerable unless the employer has been given a reasonable chance to resolve the

problem." Van Meter Industrial v. Mason City Human Rights Commission, 675 N.W.2d 503 (Iowa 2004)(emphasis added). Assuming that reasonable notice of the existence of the conditions is required we find that the Claimant has satisfied such a requirement. She clearly expressed her objections to the nurse, to management, and to Human Resources. The Employer simply dismissed the objections and insisted that she press on despite them. The Claimant therefore has satisfied any notice requirement. Since, in addition, she had good cause for refusing to perform the task the Employer insisted on assigning to her she has proven that she quit for good cause attributable to the employment.

DECISION:

The administrative law judge's decision dated March 13, 2008 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. The overpayment entered against claimant in the amount of $2,826.00 is vacated and set aside.

_____
John A. Peno

_____
Elizabeth L. Seiser

RA/kk

SEPARATE CONCURRING OPINION OF JOHN A. PENO:

I fully support the opinion that the Claimant was justified in quitting based on her physician's restrictions and on her reasonable belief that she was being required to violate them. I write separately to express my view that a disciplinary meeting conducted in violation of NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975) is itself good cause for an employee to quit. It is not completely clear on this record that the Claimant's Weingarten rights were violated. But if they were, in my opinion, the meeting itself would be an illegal working condition and the Claimant could walk out of such a meeting, quit, and collect Unemployment Benefits. A Claimant need not put up with an unfair labor practice as a condition of employment.

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John A. Peno

RA/kk

DISSENTING OPINION OF MARY ANN SPICER :

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.

_____
Mary Ann Spicer

RA/kk
DATED AND MAILED _____

Copies to:

CHRISTINE A YOUNG
904 W SUMMIT AVENUE
SHENANDOAH IA 51601-2146

CARGILL MEAT SOLUTIONS CORP.
% UC EXPRESS
PO BOX 283
ST LOUIS MO 63166