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

CATHLEEN BYERS	:	
	:	**HEARING NUMBER:** 13B-UI-00379
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
WALMART STORES 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 ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Cathleen Byers (Claimant) worked as a cashier for Wal-Mart Stores (Employer) from October 21, 2007 until she quit on December 11, 2012. On April 4, 2012 the Claimant went on a medical leave of absence. She returned to work around April 23, 2012 with a four-hour work limitation. She worked under this limitation until April 30, 2012 when she was placed back on medical leave.

The Claimant has chronic mental health problems. Ex. 1. Based on the advice of her mental health professionals the Petitioner was unable to work a job requiring as much public contact as a cashier at Wal-Mart. Ex. 1. She asked to go on medical leave the first time because her medical advisors had told her that the cashier job was exacerbating her condition and she needed to cease being a cashier. She requested to return to leave for the same reason, upon medical advice.

The Claimant, or the Claimant's mental health provider on her behalf, repeatedly asked to be accommodated by being moved to a position other than cashier, but was repeatedly denied by the Employer. Ex. 1. The Employer requires a worker on leave of absence to return to the same job. The Employer considered the Claimant's condition not work related. Under the Employer's policies such a person could only be accommodated on work hours, but would not be eligible for a transfer as a form of accommodation.

By December 2012 the Claimant was running out of money. In order to make ends meet the Claimant needed to cash in her 401K, which in turn meant she had to quit. Had the Claimant's mental health allowed her to return to work at the Employer she would have done so rather than quit. On December 11, 2012 the Claimant quit. She offered to give two week notice, but the Employer told her it was not necessary. The Claimant indicated that she would not be able to return because her health would not allow it.

REASONING AND CONCLUSIONS OF LAW:

Quit For Multiple Reasons: 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.

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)).

When assessing the reasons given for the quit, we are required to answer three questions: (1) What causes, that are attributable to the employment, contributed to the decision to quit? (2) Do any of those causes, either by themselves or in combination, constitute good cause for quitting? (3) Would those causes, which constitute good cause attributable to the employment, have resulted in the quit by themselves? In answering these questions we are mindful of *McCunn*'s directive that we have to consider that all the reasons that are attributable to the employment may constitute good cause in the aggregate.

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Claimant's evidence that but for the aggravation of her mental health condition by her job as a cashier, she would have returned to work rather that quitting. This aggravation was a but for cause of her quit.

Even if we were to find that the desire to cash in the 401K was the sole cause of the quit – and we do not – we would rule the same way. This is because the Courts in Iowa use a simple causality test in unemployment cases. "[I]njecting causation into unemployment compensation cases has not meant importation of all the complexities of 'proximate cause' doctrine into unemployment compensation. On the contrary the decisions have escaped the difficulties of [this doctrine] by adopting the relatively simple 'but-for' rule…" *Bridgestone/Firestone, Inc. v. EAB*, 570 N.W.2d 85, 91 (Iowa 1997). Although this discussion was in the context of when a work stoppage exists "because of" a labor dispute the same concern for simplicity applies to the issue of when a claimant quits for a good "cause." Given this then our analysis would be thus: (1) But for the mental health problems the Claimant would be at work earning wages (2) But for the fact that the Claimant was not at work earning wages she would not need money other than from wages (3) But for the Claimant's need for money other than her wages the Claimant would not have decided to cash in her 401K (4) But for her desire to cash in her 401K the Claimant would not have quit. With this chain of reasoning even if we were to find that the 401K cash-in was the sole cause of the quit, still we would find that "but for" the mental health problems (and the resulting lack of money) the Claimant would not have quit.

The mental health problem being a "but for" cause of the quit, the next issue is whether those problems were attributable to the employment.

Standards Governing Quits For Work Related Health Problems: 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:
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> ....
> *(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.
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> 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.

In general "[g]ood 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).

In *White v. Employment Appeal Board*, 487 N.W.2d 342, 345 (Iowa 1992) the Supreme Court explained the attribution rules in health quit cases:

> 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 also Ellis v. Iowa Dep't of Job Serv.*, 285 N.W.2d 153, 156-57 (Iowa 1979) (claimant's showing that recently installed Christmas tree would aggravate her pre-existing allergies was sufficient to constitute a "quit" that was attributable to her employer); *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 the Claimant's evidence is specific that the stress of the cashier position worsened her symptoms, that when she sought to return "inevitably the duties of that position would exacerbate her mental health symptoms," and that "returning to her position as a cashier…would ultimately set her back mentally…" Ex. 1. Unlike worker's compensation, where the condition must arise out of and be in the course of employment, the Employment Security Law is not concerned only with the ultimate cause of the condition. Under *White*, and *Ellis,* and the binding regulations it is enough that there be "[f]actors and circumstances directly connected with the employment, which caused **or aggravated** the illness." 871 IAC 24.26(6)(b). Here those factors and circumstances are the requirement that the Claimant interact so extensively with the public. The Claimant has carried her burden of proving that her mental health was aggravated by her job environment.

Notice Of Intent To Quit: In cases of work-related health problems the employee is still required to satisfy the notice requirements of 871 IAC 24.26(6) in order to be eligible for benefits.

Here the Claimant was told she could not be accommodated. There was only one accommodation possible for a cashier who needed to minimize contact with people, and that was a transfer. The rules specifically recognize that "[r]easonable accommodation includes comparable work which is not injurious to the claimant's health …." 871 IAC 24.26(6)(b). The Employer made very clear that no such accommodation would be forthcoming, and that if the Claimant ever came off leave she would go right back to the job she couldn't do without aggravating her health condition. What else, under these circumstances, could the Claimant do *but* quit? Her long standing condition was not going to miraculously resolve, and in the meantime the Claimant needed money. No reasonable Employer could think that the Claimant was going to do anything but resign unless accommodated. Moreover, what conceivable purpose would the notice serve? The Claimant had repeatedly asked for the only possible accommodation and the Employer was crystal clear than no transfer would be allowed. Thus yet another request for accommodation would be an exercise in futility, even if the Claimant *expressly* said what the Employer already knew, that she would have to quit if not transferred.

After all, "common 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." *Wiese v. Iowa Dep't of Job Serv*., 389 N.W.2d 676, 680 (Iowa 1986). Using common sense and prudence we find that an exercise in futility – asking for accommodation that had already been denied - was not required. This approach survives the *Wiese* "test of reason" as it has for many years, since "[t]he law does not require what is vain and useless." 1 E. Coke, *Commentarie upon Littleton* §319 (1628)("Quod vanum et inutile est, lex non requirit."); *Bouvier's law Dictionary*, p. 2161 (8th. Ed. 1914) c.f. *Nora Springs Co-op. Co. v. Brandau*, 247 N.W.2d 744 (Iowa, 1976)(notice of waiver not required since pointless) *Brandenburg v. Carmichael*, 192 Iowa 694, 704, 185 N.W. 486, 490 (1921)(citing Smith v. McLean, 24 Iowa 322, 326)(law does not require "vain and useless labor"); *Porazil v. IWD*, 2003 WL 22016794, No. 3-408 (Iowa Ct. App. Aug. 27, 2003)(requiring claimant to work to offer services where claimant was already fired would be "erroneous and unreasonable"). Finally, the Claimant offered to give two weeks notice, that is, to stay on the job. This was *express* notice that the Claimant would quit unless accommodated, and the Employer would have time to respond. The Employer, however, said the notice would not be necessary – apparently also recognizing the futility of it. The Claimant has satisfied any reasonable requirement of notice as the Employer had ample time to comply with the Claimant's repeated requests for accommodation if it were possible.

DECISION: The administrative law judge's decision dated February 14, 2013 is **REVERSED**. The Employment Appeal Board concludes that the claimant was quit for good cause attributable to the employer. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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John A. Peno

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Cloyd (Robby) Robinson

RRA/ss