

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

JESSICA J OVERHAKE

Claimant,

and

**NORTH AMERICAN HALAL FOODS IND
INC**

Employer.

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**HEARING NUMBER: 13B-UI-03999 &
13B-UI-00051**

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

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, 96.6-2

DECISION

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. The Board **AFFIRMS** the administrative law judge's decision regarding the timeliness issue. However, a majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision on the merits of this case. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Jessica J. Overhake, initially began working for Midamar on November of 2010, and then with North American Halal Foods Ind, Inc. from January of 2012 until December 3, 2012 as a full-time Compliance HACCT Coordinator (Quality Assurance). It was the Claimant's responsibility to ensure that product came in and went out with properly completed shipping certificates, inter alia, in compliance with export orders. (Tr. 46:38-46:18)

Ms. Overhake had worked under the direction of Bill Aossey, the Director, who provided daily instruction on various tasks for the operation of the business. (48:45) Oftentimes, the claimant felt she was expected to 'look the other way,' falsify, or allow documents to be falsified, i.e., changing dates or

labels indicating product that came from Canada by switching it to USA. (49:02-48:53) She'd heard that the end of 2010, USDA raided the Halal Foods. (31:51-31:10) The government agency had found mislabeled documents and export documents that had been falsified, which involved food safety. (46:05-45:55) She brought her discovery to the Employer's attention and he assured her that "...he would get the documents she needed..." (45:12-45:03) At that time, employees were asked to sign an order agreeing not to take direction from Bill Aossey, the Director. (46:10; 31:01-30:04; 23:51) He was also barred by agreement with the government from being involved in the operation of export activities.

On October 17, 2012, the Employer was raided, again, by USDA and the IRS for which charged were pending. Ms. Overhake became concerned because she found documents that had been falsified, i.e., slaughter certificates and shipping certificates. (40:15; 39:51-39:33; 38:20-38:08; 17:50-17:25; 16:35-16:14) She contacted Jalel Aossey, who was in Dubai, by telephone at 4:00 p.m., Central Standard Time (36:55-36:10) to report her findings. He told her that "...the records... may not have been created accurately because he didn't have the documentation to create them accurately..." (35:39-35:10) The Claimant had already argued with Mr. Aossey's brother, Bill, about the matter who became angered because she told him he couldn't scratch off the dates on labels. (16:35-16:14; 14:48-14:30) Bill Aossey told her that anybody who wasn't loyal to him would be fired. (14:30; 14:07-14:00; 13:16; 12:11-12:00) Ms. Overhake had tried to talk to Jalel on numerous occasions before about Bill's practices. (44:34)

During her phone call to Jalel Aossey, he directed her to contact the Managing Director (34:57-34:33) and reassured her that he would start the process correctly on Monday. (34:17-34:03) The Director subsequently sent an e-mail indicating that the Claimant had his full support to correct whatever matter was an issue. (19:55-19:30) Ms. Overhake did not feel secure in his response because he had given that same type of reassurance in the past when she previously discovered the company had received outdated meat (from a year to three years old) that had been dumped into the processing facility. (33:34-33:00) She also believed she could do nothing further to voice her concerns given her past confrontations with the owner's brother, Bill Aossey.

The Claimant's witness, Holly Riley, had also been asked to perform what she believed were unethical tasks, in that Bill Aossey had asked her to send emails on his behalf regarding export issues. Ms. Overhake quit on December 3, 2012 due to her concerns about what she perceived were illegal business practices (49:38-49:00), and that further employ at the employer could involve her in unethical or illegal activities.

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 illegal 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). The question of good faith must be measured by an objective standard. 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).

"[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).

B. Application Of Standards:

As a Quality Assurance Coordinator, it was incumbent upon Ms. Overhake to ensure that the company product and related certification were appropriate, accurate and in compliance with the legal standards required for that aspect of business, i.e., export/import. Failure to comply with those standards would not only place the employer in jeopardy (liability), but could also jeopardize her employment and reputation as well in that field of the industry. Ms. Overhake's initial voiced concerns regarding shipping labels being scratched off or 'mislabelled' were met with hostility, and the threat of termination if she weren't loyal to Bill Aosse. Any reasonable person would find the Employer's behavior under this circumstance at the very least 'shady', and potentially unethical or possibly even illegal.

Later, when the Claimant brought her concerns to the Jalel Aosse, both parties agree that he verbally gave her 'his full support and backing' to perform whatever task she deemed necessary to make sure the company was in compliance. Unfortunately, Jalel's alleged unflinching support by that time didn't amount to a recognizable change in the Employer's practices, which obviously led to the second raid by government agencies. It was not unreasonable for Ms. Overhake, the Compliance/Quality Assurance Coordinator to have a serious concern for her ethical standards. The Employer's company had already been raided by federal agencies in 2010, and again in 2012. The fact that the raid(s)' resultant charges were later dropped does not detract from the Claimant's reasonable suspicion that the Employer's questionable practices around the time she quit were illegal. The test is whether a reasonably prudent person in the Claimant's position would believe something "improper or illegal" was going on that necessitated her resignation. *O'Brien* at 662. We conclude that this test has been met by the Claimant.

Furthermore, a reasonable person could conclude that the federal government has a reason when it conducts raids and seizes property. Such a person could conclude that there was some underlying illegal activity that prompted the raid. We conclude that Ms. Overhake acted reasonably and she showed just grounds for her action, and good faith. *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986).

We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Claimant's testimony of why she quit, i.e., that she quit over a belief that she was in danger of being involved in illegal or unethical activities. We find this belief reasonable, and so allow benefits based on this theory independent of any other.

Even aside from the Claimant's reasonable belief in ongoing illegal or unethical activities, we find her concern for her reputation to supply independent good cause attributable to the employment for quitting. We reiterate that 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). The Claimant's concern that continuing to work for her employer would endanger her reputation is a reasonable one, and is attributable to the employment itself, even if the Employer is completely innocent. *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"). Also where strife associated with the Employer creates a risk to a claimant then a quit may not be voluntary, and thus need

not be attributable to the Employer to justify a quit. *Ames v. Employment Appeal Board*, 439 669 (Iowa 1989)(picketers). So even aside from attribution to the employment, the Claimant was reasonable in her belief that she had no choice, if she was to save her reputation and her career as a paralegal, but to quit. Thus under *Ames* we would also find the quit not even to be voluntary. Under these independent alternative theories we would also allow benefits.

DECISION:

The administrative law judge's decision dated May 8, 2013 is **REVERSED**. The Employment Appeal Board concludes that the claimant proved that she 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.

John A. Peno

Cloyd (Robby) Robinson

DISSENTING OPINION OF MONIQUE F. KUESTER:

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.

Monique F. Kuester