BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov

TERESA DUMERAUF

Claimant

and

NEW CHOICES INCORPORATED

Employer

: **APPEAL NUMBER:** 23B-UI-00451
: **ALJ HEARING NUMBER:** 23A-UI-00451
:
: **EMPLOYMENT APPEAL BOARD DECISION**
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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 Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board adds the following to the Reasoning and Conclusions of Law:

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)). We have considered the reasons put forward by the Claimant besides the final change in hours. We find that these were not necessary nor sufficient to bringing about the decision to quit. The Claimant quit when her hours changed, and would not have quit had the change not taken place. Even in the context of her prior complaints we do not find this change to be sufficient reason to constitute good cause for *quitting.* We differ somewhat in our analysis from the Administrative Law Judge because we recognize that "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."). This means 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). Thus the mere fact that the Employer is not at fault for the change in Claimant's hours does not by itself defeat of showing of good cause attributable to the Employer.

Normally a cut in hours, and thus pay, is a change in contract of hire and thus good cause for quitting. This is not the usual case. In this case the Claimant has failed to show that occasional loss of assignment, and thus hours, was not contemplated in the contract of hire. In situations like this a claimant can expect to be off work for a period between assignments. This is an expected condition of employment, not good cause for quitting. *See* 871 IAC 24.25(34) (not good cause where work was irregular based on weather, but this was usual in claimant's type of employment); 871 IAC 24.25(13)(Not good cause to be dissatisfied with wages if claimant "knew the rate of pay when hired."). To be clear, during such a period a claimant can collect benefits, or partial benefits, for the period of inactivity. But it is not good cause for **quitting** the employment. 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"); *Haberer v. Woodbury County*, 560 NW 2d 571, 576 (Iowa 1997) ("Every job has its frustrations, challenges, and disappointments; these inhere in the nature of work.... An employee is not guaranteed a working environment free of stress"). Assignment change is not a change in contract, but an expected feature of the job the Claimant agreed to take. Of course, if the job conditions were harmful or objectively detrimental, or the period of under-assignment goes on for longer than is reasonable, we would certainly not say that the Claimant has agreed to put up with the environment. But this is not a case where objectively detrimental job conditions have been proven, and the change in hours being an expected feature of this type of job does not constitute a change in contract. Good cause for *quitting* attributable to the Employer has not been shown.

Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information was not presented at hearing. Accordingly none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

RRA/fnv