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

LINDA C HUIZENGA	:	
	:	**HEARING NUMBER:** 13B-UI-10174
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
BEATON 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 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:

Linda Huizenga (Claimant) worked as a part-time hourly crewmember for Beaton Inc., doing business as Burger King (Employer), from January 17, 2011 until she quit on July 20, 2012.

The Claimant quit because she refused to comply with the requirement that all crewmembers have their uniform shirts tucked in while performing services. This rule had been mandated by the franchiser as part of its uniform requirement.

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(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

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)).

"Change in the contract of hire" means a **substantial** change in the terms or conditions of employment. *See Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. *See Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* The test is whether a reasonable person would have quit under the circumstances. *See Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988); *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993).

B. Application of Standards: The first thing the Claimant must show is that the contract changed. For our purposes we can assume that the Administrative Law Judge was correct when he found that the no-shirt-tuck issue was negotiated as part of the Claimant's contract. Normally, such an issue would not be part of the contract of hire. If it was specifically negotiated then this would make a "no-shirt tuck" condition part of the contract of hire. When the Employer then insisted on shirt tucking this would be a change in the contract. Where the Administrative Law Judge goes astray is to conflate a change in **a** term in the contract of hire with a change in a **substantial** term of the contract. Not every contract change is a substantial one, and the fact that the change is to a specifically negotiated term rather than an implied one does not by itself mean the change is a substantial change. For example, suppose a claimant specifically negotiates a $20 per hour rate of pay, and then the employer cuts this to $19.99 per hour. This would be a change in the specifically negotiated contract of hire. But as it is a .05% change it would not be a substantial change. Proving a change in contract is the first step in proving a substantial change in the contract. But the second step is proving that the change in substantial. We thus assume that the shirt-tuck directive was a change in the contract of hire, and that the term was specifically negotiated, and we now turn to whether the change in that term would be a substantial change.

It is critical when assessing whether a change in contract of hire is substantial that we look at it from the Claimant's perspective, but that this is not a *subjective* standard. The Court first took up the issue of the objective standard in unemployment cases when determining whether a claimant had good cause for refusing an instruction in an insubordination case. The Supreme Court specifically ruled that the question of good faith in the context of misconduct 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 and where the behavior may be properly deemed misconduct." *Aalbers v. Iowa Department of Job Servic*e, 431 N.W.2d 330, 337 (Iowa 1988). To avoid this situation good faith is measured by an objective standard of reasonableness. The Court took up the issue in the context of quitting in *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993). The Court discussed and adopted the *Aalbers* standard for quit case. The Court stated that under the *Aalbers* standard the "key question is what a reasonable person would have believed under the circumstances" and then the Court held "[t]his same standard should be applied in determining whether a claimant left work voluntarily with good cause attributable to the employer." *O Brien* at 662. The objective reasonable person standard has governed quit cases since 1993. Thus we may not conclude that the shirt-tuck issue is a substantial issue just because the Claimant had a subjective belief that the issue was a substantial one. Instead we ask would a *reasonable person* who was in the *Claimant's circumstances* find the change in contract to be substantial? If no reasonable person in the Claimant's situation would find the change substantial, then benefits may not be allowed.

The tucking in of a shirt, or not, is ordinarily a very minor thing. Again, the mere fact that this issue may have been negotiated as part of the contract of hire does not mean that the issue is a substantial issue. The question thus is the obvious one: *why* did the Claimant want to not tuck in her shirt? When asked the Claimant testified it was because she just did not like to tuck her shirt in. When pressed again she said "I guess it would be my own personal reason." (Rec at p. 13:20). When asked a third time, specifically about medical problems, the Claimant said that she had a personal preference but also that "medical issues" also "played a part." She testified she did not, however, want to get into that. We are thus left

with only speculation what these medical issues could have been, and no way of assessing whether shirt-tucking really played a part in some unknown medical issue, and no way of assessing whether the shirt tuck requirement has a substantial effect on the medical issue. This is insufficient to sustain the burden of proof, and we cannot find that the Claimant has proven an objectively substantial change in the contract of hire. The Claimant has not proven good cause for quitting.

In the alternative, we find that the case falls under the rule of *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). *Cobb* also dealt with a claimant who quit because medically required restrictions that were negotiated at the time of hire were being violated later on. In *Cobb* the claimant quit and claimed a change in contract of hire. *Cobb* at 448. The *Cobb* Court found applicable the rule from *Suluki v. Employment Appeal Bd*., 503 N.W.2d 402 (Iowa 1993) that "as a condition of entitlement to unemployment benefits--an employee to give an employer notice of work-related health problems before quitting." *Cobb* at 44 (quoting *Suluki* at 405). The Court rejected the argument that having the term negotiated at the time of hire was enough to satisfy the notice requirement. The Court wrote:

> The *Suluki* notice requirement is not waived by reason of preliminary understandings about work restrictions reached at the time employment is undertaken. The persons assigning the myriad of tasks to a work force should not be expected to check employment applications, or to bear in mind the conversations that took place during a job interview. Surely it is more fair to require the employee to remind the employer at the time a task is assigned that some agreed restriction would thereby be violated.

Cobb at 448. Assuming that the Claimant had substantial health-related reasons for quitting the *Cobb* rule obviously applies in this setting, and the Claimant admits that she did not mention the medical problem when she was told to tuck in her shirt. Thus even if we were to find a substantial change, we would find that the notice requirement of *Cobb* applies where the change implicates health concerns, and that that notice requirement was not satisfied here.

DECISION:

The administrative law judge's decision dated November 5, 2012 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit but not for good cause attributable to the employer. Accordingly, she 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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John A. Peno

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Monique F. Kuester

DISSENTING OPINION OF CLOYD (ROBBY) ROBINSON:

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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Cloyd (Robby) Robinson

RRA/fnv