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

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| **FRANCES P WELLS** | : | |
| | : | **HEARING NUMBER:** 16B-UI-05275 |
| Claimant | : | |
| | : | |
| and | : | **EMPLOYMENT APPEAL BOARD DECISION** |
| | : | |
| **ADVANCE SERVICES 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, 96.4-3

## 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. 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:**

Frances Wells (Claimant) worked for Advance Services, Inc. (Employer) on assignment to Cardinal IG Co. as a full time laborer. The Claimant was on medication for a heart condition that was not caused by her employment. The Claimant went on new medication. The medical professionals treating her advised her that she should quit because the new medication would make it impossible for her to safely perform her job duties at Cardinal IG Co. For this reason the Claimant quit on April 5, 2016.

**REASONING AND CONCLUSIONS OF LAW:**

*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. **But** the individual shall not be disqualified if the department finds that:

…

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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).

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:

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. **Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment**.

> *(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.

Condition is Not Work Related: 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). 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 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).

The Claimant's difficulty in this case was that she quit because her medication was changed not because her condition was caused by the employment, and not because her condition had been made worse by the employment. The Claimant changed medication; it was not the employer who changed the job conditions. Further, the Claimant never worked while under the new medication regime and thus never actually suffered any exacerbation caused by the employment. The Claimant quit because she was understandably worried about what *would* happen if she came to work while under the new medication. This is simply not a situation where the working conditions in fact aggravated the Claimant's health condition. The Claimant has not proven the condition to be work related within the meaning of the law as set out above.

*Claimant Has Not Returned Without Restrictions:* As pointed out above where a Claimant quits upon the advice of a physician, and where the condition is not work related, that claimant may nevertheless become eligible for benefits. In cases of non-work related injury a claimant only become eligible, however, once they return to offer services *without restriction.* 871 IAC 24.26(6)(a); *Hedges v. Iowa Dept. of Job Service*, 368 N.W. 862 (Iowa 1985). The full recovery requirement for injuries that are not work related is based on *Hedges v. Iowa Dept. of Job Service*, 368 N.W. 862 (Iowa 1985). There the claimant had been placed on medical leave due to a heart ailment and then returned to work and presented her employer a thirty-pound lifting restriction. The employer refused to reinstate Hedges even though "she appeared willing to violate her physician's orders". *Hedges* at 864. Ms. Hedges applied for benefits citing Iowa Code §96.5(1)(d). "Ms. Hedges assert[ed] that the word 'recovery' for purposes of section 96.5(1)(d) is not synonymous with being able to perform all aspects of former employment when an employee returns to work." *Id.* at 866. The Supreme Court rejected this argument and found that the §96.5(1)(d) exception does not apply unless the employee has fully recovered. The employee must return "upon recovery" – that is once the restrictions are lifted.

Here the Claimant voluntarily quit upon the advice of a physician. This being the case she can only requalify for benefits if she returns and offers her services once fully released, and the Employer has no job for her. 871 IAC 24.26(6)(a); *Hedges v. Iowa Dept. of Job Service*, 368 N.W. 862 (Iowa 1985). It is possible that in the future the Claimant will at some point find that she is capable of returning to the Employer – for example, if the medication regime changes. If she then returns and presents a full release to the Employer, and if she then is not employed then she should notify Iowa Workforce of these events so that it can consider whether to unlock her claim for benefits by applying Iowa Code §95.5(1)(d).

The Claimant left work based on the advice of a physician but for a non-work related health condition. She is thus disqualified but she will requalify for benefits as soon as she returns and offers her services to the Employer, or until she earns ten times her weekly benefit amount, whichever is sooner.

**DECISION:**

The administrative law judge's decision dated May 24, 2016 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 the earlier of (1) such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, or (2) such time as the Claimant fully recovers and then returns and offers her services to the Employer. Of course the Claimant may not collect benefits even after requalifying unless she is otherwise eligible.

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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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv