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

LASHAWNA JONES Claimant, and FEJERVARY HEALTH CARE CENTER INC Employer.	:	HEARING NUMBER: 09B-UI-10122 EMPLOYMENT APPEAL BOARD DECISION

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. 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:

LaShawna Jones (Claimant) was employed by Fejervary Health Care Center (Employer) as a CNA, part-time, beginning August 8, 2008, through June 4, 2009, when she voluntarily quit. (Tran at p. 3).

Around early March the Claimant became pregnant. (Tran at p. 4; p. 7 [due date of Dec. 7 is 40 weeks after March 2]). On Sunday May 11 the Claimant was experiencing cramping and bleeding and asked to go home. (Tran at p. 5). She was not approved to leave. (Tran at p. 5).

On the Claimant's next scheduled day she was called into the Director of Nursing Diane Bjac's office. (Tran at p. 5). DON Bjac told the Claimant "it's not her problem that [the Claimant] got pregnant." (Tran at p. 4). She told the Claimant that she would fire the Claimant if she called off from pregnancy again. (Tran at p. 5). She told the Claimant to stop calling in. (Tran at p. 5).

In June the Claimant went into hospital in part due to pregnancy complications. (Tran at p. 5; Ex. A). When the Claimant returned to work with a release, DON Bjac sent her home insisting that the note specify no restrictions. (Tran at p. 6; Ex. A). She was again threatened with termination if she called in due to pregnancy-related illness. (Tran at p. 5-6; p. 10 [DON admits]; Ex. A). She was told if she ever had any pregnancy-related restrictions she would be fired. (Tran at p. 11). The physician had already sent in a note that did not mention any restriction. (Tran at p. 6; p. 9; Ex. A). None of the Claimant's releases ever had restrictions. (Tran at p. 12). The Employer imposed a stricter return-to-work certification for employees absent due to pregnancy-related illness than for other types of illness. (Tran at p. 8-9). The Claimant quit after the Employer continued to complain about pregnancy-related absences while at in-service training. (Tran at p. 7-8; Ex. A).

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). Good faith under this standard is not determined by the Petitioner's subjective understanding. The question of good faith 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." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988). 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 [Petitioner], 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).

B: Good Cause: We highlight two provisions of Iowa law. First, regardless of the FMLA Iowa Law *for decades* has granted pregnant employees a minimum of medical required leave. An employer of a pregnant woman "shall not refuse to grant to the employee who is disabled by the pregnancy a leave of absence if the leave of absence is for the period that the employee is disabled because of the employee's pregnancy, childbirth, or related medical conditions, or for eight weeks, whichever is less." Iowa Code §216.6(2)(b). We note that this 8-weeks of leave applies regardless of the number of hours the Claimant worked, regardless of how much non-pregnancy leave the Claimant had previously taken, and that the threshold number of employees is four. *See* Iowa Code §216.6(a)(4 employee exception). Second, "[d]isabilities caused or contributed to by the employee's pregnancy, miscarriage, childbirth, and recovery there from are, for all job-related purposes, temporary disabilities and shall be treated as such under any temporary disability or sick leave plan … Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, … reinstatement, … formal or informal, shall be applied to a disability due to the employee's pregnancy or giving birth, on the same terms and conditions as they are applied to other temporary disabilities." Iowa Code §216.6(2)(e).

Here the Employer demonstrated hostility to the idea that the Claimant was pregnant and treated her pregnancy-related absences as if they were somehow the fault of the Claimant, and voluntary. (Tran at

p. 4-5). The Employer treated the Claimant's condition unlike any other illness. Also the Employer continued to threaten the Claimant's employ, promising termination, even though the Claimant had not come anywhere near 8 weeks of leave due to her pregnancy-related medical problems. Given this history and the pervious incidents the Claimant had a reasonable fear that if she had complications in the future she would once again not be allowed to leave work. When added to the discriminatory treatment the Claimant had received we think this sufficient to show "improper or illegal activities were occurring at [Employer] that necessitated [the Claimant's] quitting." *O'Brien* at 662.

We note this is not a civil rights case and that our findings have no effect at all on any such proceedings. Iowa Code §96.6(4)(Board findings are "not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States.").

C. Notice of Intent To Quit: "[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). The ruling in *Hy Vee* thus dispenses with the requirement that the Claimant tell the Employer she would quit over the treatment of her pregnancy.

D. Notice of Detrimental Conditions: It is not clear how far the ruling in *Hy Vee* sweeps. Clearly, the Claimant need not give notice of an intent to quit. Left unanswered, however, is whether the Claimant needs to give notice of the intolerable conditions themselves. In other words, is a Claimant still required to inform the employer that something is wrong even though the Claimant need not threaten to quit over it? The case will come, no doubt, when we will have to answer this question. This is not that case. On this record, even if we were to conclude the Claimant had an obligation to place the Employer on notice of the detrimental conditions, we find that the Claimant has satisfied any reasonable requirement of notice. Obviously a DON is a person of high responsibility at a care facility, and an administrator will ordinarily defer to a DON on issues relating to the nursing staff. The DON knew what she was saying and doing and so the Employer had plenty of sufficient notice of the problem.

DECISION:

The administrative law judge's decision dated July 31, 2009 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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Elizabeth L. Seiser

kjo

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.

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Monique F. Kuester

RRA/kjo