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

JAMES D NORRIS	:	
	:	HEARING NUMBER: 09B-UI-02782
Claimant,	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
RYDER INTEGRATED LOGISTICS 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:

James Norris (Claimant) worked for Ryder Integrated Logistics (Employer) from 2005 with his last day on the job site being December 30, 2008. (Tran at p. 3; p. 8; p. 9). Claimant was separated from employment January 8, 2009 due to three no-call absences in violation of policy. (Tran at p. 3; p. 9; Ex. 1).

Claimant had spent most of his time as a delivery driver with this employer. (Tran at p. 4-5). The Claimant was moved to doing no delivery duties as a result of a complaint about his driving. (Tran at p. 4-6). The Claimant then worked primarily in the warehouse driving a forklift. (Tran at p. 7). The rate of

pay and hours of work remained unchanged. (Tran at p. 10). The Claimant had worked the warehouse before. (Tran at p. 7). Warehouse duties were in the Claimant's job classification of materials handler. (Tran at p. 9; p. 12). The record shows nothing notably onerous or unpleasant about the warehouse duties.

Claimant stopped coming to work because of the change in job duties. (Tran at p. 4 ["I quit my punishment"]; p. 5; p. 23; Ex. A). The Claimant submitted no medical proof to back up his claim that his job was making him sick. (Tran at p. 8).

REASONING AND CONCLUSIONS OF LAW:

The Claimant alleges that the Employer changed in contract and that, as a result, he became ill from his work. We therefore analyze this case under both the change in contract of hire and the work-related illness rubrics.

Change in Contract: Concerning quits 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).

We do not think the Claimant has proven that the change in the contract was a "drastic modification" in the Claimant's work as is contemplated by the rules. The record establishes that the Claimant's job classification encompassed warehouse work. While it is true that the Claimant was now being asked to devote his time to warehouse work, he had been asked to work the warehouse in the past. The Claimant could be asked to do warehouse work as a materials handler, and had been asked to do it as a matter of practice. The Claimant has not proved that the final actions of the Employer were a *substantial* change in the contract of hire.

Work-Related Illness: Under Iowa Administrative Code 871-24.26:

> The following are reasons for a claimant leaving employment with good cause attributable to the employer:
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> ....
> *(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.

In White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) the Supreme Court explained:

> 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.

Here the Claimant alleges that his condition was work-related under the second prong, that is, the Employer made a change in the work environment that caused health problems for the Claimant. We find against the Claimant under this theory for two reasons, each of which is independently enough to find against the Claimant. First, the Claimant has failed to prove that he in fact suffered health problems as a result of his work. We have only the Claimant's assertion that he was feeling ill. (Ex. A). We do not find this sufficiently credible to conclude that he had a legitimate health condition caused by the job. The Claimant did not "present competent evidence showing adequate health reasons to justify termination." 871-24.26(6)(b). Second, the Claimant was required, by the rules, to "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" if he wants to collect benefits. 871-24.26(6)(b). The Claimant quit by job abandonment – no communication at all – and therefore falls fall short of satisfying this mandatory notice.

We find the Claimant has not proven good cause for his quit under either asserted theory and that he must therefore be disqualified from benefits.

DECISION:

The administrative law judge's decision dated March 17, 2009 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit but not for good cause attributable to the employer. Accordingly, he is denied benefits until such time as 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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Elizabeth L. Seiser

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Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO :

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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John A. Peno

RRA/ss