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

ANGELA M TERRONES	:	
	:	**HEARING NUMBER:** 11B-UI-03246
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
GREAT LAKES STAFFING	:	
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 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:

Angela Terrones (Claimant) worked for Great Lakes Staffing (Employer), a temporary employment agency. (Tran at p. 2). The Claimant was hired for a temp-to-hire assignment on December 6, 2010. (Tran at p. 2-3). At the time of hire, she was informed that she would not be eligible for an additional assignment if she was a no-call/no-show or if she quit without notice. (Tran at p. 5).

The Claimant was assigned to Crescent Woolen Mill. (Tran at p. 2). Things were unremarkable for the first couple of weeks. (Tran at p. 2). After that, her co-workers verbally abused her. (Tran at p. 2-3). They called her a moron, called her stupid, and said they couldn't understand why she was still there. (Tran at p. 2-3). Around January 6, 2011, the Claimant informed the Employer of the problems. (Tran at p. 3). The Employer offered sympathy but no solution. (Tran at p. 3-4).

On January 13, 2011, the Claimant called the Employer and said she would not be returning to that assignment because the other employees were mistreating her. (Tran at p. 3-4; p. 5). The Claimant, at that time, requested another assignment. (Tran at p. 4; p. 5). The Employer refused to reassign her, and instead terminated her because she refused an assignment with insufficient notice. (Tran at p. 4-7).

REASONING AND CONCLUSIONS OF LAW:

Did the Claimant Quit? Iowa Code section 96.5(1)"j" provides:

> 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:
>
> j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within **three working days** of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.
>
> To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.
>
> For the purposes of this paragraph:
>
> (1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.
>
> (2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

On the issue of whether the Claimant has reported pursuant to paragraph "j," the Claimant had the burden of proof by statute. Iowa Code §96.6(2).

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason, except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5.

First of all, we find the Claimant did not intend to quit. She intended to leave the assignment, but not to quit the Employer. The mere fact that the Claimant gave short notice does not convert an attempt to get reassigned into a decision to quit, policy or no. Also, the Claimant was legitimately confused over the meaning of the three-day requirement. The Claimant did not intend to quit.

Next, we must ask if the Claimant can be deemed to have quit under Iowa Code §96.5(1)(j). That section requires three days' notice from the time of leaving an assignment to ask for reassignment. Here, the Claimant asked for reassignment at the same time that she told the Employer she was refusing to return to the assignment at Woolen Mills. The Claimant clearly did notify the Employer of the end of the assignment and request reassignment with the Employer within the requisite three working days.

Since the Claimant did not actually quit, and since the Claimant cannot be deemed a quit by operation of law, the Claimant cannot be disqualified for quitting.

Did the Claimant Commit Misconduct?: Treating this case as a termination, then the Employer can prevail if it has proven misconduct.

Iowa Code Section 96.5(2)(a) (2011) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

> *Misconduct* is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On

> the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." Huntoon v. Iowa Department of Job Service, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

The Claimant was harassed, complained, and then quit when it kept happening. The worst that can be said is that perhaps the Claimant should have stuck it out a bit longer to see if the situation could be resolved. By quitting the assignment as she did, the Claimant is at the most guilty of a good faith error in judgment or discretion that is not disqualifying. Misconduct has not been proved.

Not Disqualified Even If She Quit: Even if we were to find that the Claimant quit, we would still not disqualify her. This is because he has proven that if she left it was because of detrimental working conditions. 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).

"[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).

If the Claimant quit, it was because of the abuse at Woolen Mills. The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Claimant's testimony that she was ridiculed frequently. The abuse is sufficient to be good cause attributable to the Employer for quitting. If the Claimant quit, she has proven that he quit for reasons which constitute good cause attributable to the employment, and benefits are allowed.

DECISION:

The administrative law judge's decision dated April 6, 2011 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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John A. Peno

_____
Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE 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 Kuester

RRA/kk