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

CHARLES E WOOD Claimant, and FREELAND CORPORATION/FIELD PAPER CO Employer.	:	HEARING NUMBER: 09B-UI-12123 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:

Charles Wood (Claimant) worked for Freeland Corporation (Employer) as a full-time order filler from January 8, 2008 until the time of his quit. (Tran at p. 2; p. 5). The Claimant had a work-related injury. (Tran at p. 2-3). The Claimant saw a physician who provided him with a note stating that he should take some time off the job and go back to work on light duty. (Tran at p. 3; p. 4). The Claimant informed the Employer of his restrictions and was told there was no light duty, and he was thereupon separated. (Tran at p. 2; p. 6; p. 7).

REASONING AND CONCLUSIONS OF LAW:

Standards Governing Quits For Work Related Health Problems: 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.

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.

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:
>
> ....
> *(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.

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.

Even a pre-existing health condition that is aggravated by the job is attributed to the Employer under White. See Rooney v. Employment Appeal Bd., 448 N.W.2d 313, 315-16 (Iowa 1989)(noting that a recovering alcoholic who terminates employment with bar and liquor store may do so without disqualifying himself for unemployment benefits to the extent that the employment is found to have "aggravated" his condition).

Job Relatedness: The Claimant credibly testified that he was injured at work. Moreover he testified that his condition was then such that working would aggravate his problems and that he was restricted from full duty for this reason. The Claimant has proven "[f]actors 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." 871 IAC 24.26(6). We find that the Claimant had good cause attributable to the Employer for quitting.

Notice Of Intent To Quit: In cases of work-related health problems the employee is still required to satisfy the notice requirements of 871 IAC 24.26(6) in order to be eligible for benefits. The Claimant was given work restrictions. The Claimant told the Employer of the restrictions, which, of course, implies that he could only work under these "restrictions." The Employer told him the restrictions could not be accommodated and that there was no position for the Claimant. The Claimant has satisfied any reasonable requirement of notice as the Employer understood that the Claimant was off work and would only come back if he could be accommodated. (Tran at p. 5). Since the injury was job related and job aggravated the Claimant is not disqualified from benefits.

DECISION:

The administrative law judge's decision dated January 12, 2009 is **REVERSED**. The Employment Appeal Board concludes that the Claimant 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

RRA/fnv

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 F. Kuester

RRA/fnv