

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

MICHAEL D LOFFREDO	:	
	:	HEARING NUMBER: 21B-UI-04190
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
IA DEPT OF TRANSPORTATION	:	
	:	
Employer	:	

NOTICE

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

DECISION

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:

The Claimant was employed by the Iowa Department of Transportation as a full-time welder from 2018 and last performed work for the employer on October 29, 2020.

The Claimant reported to the Employer that he thought a coworker had brought a gun to work. The Employer investigated the complaint and found it to be without merit. The person in question told the Employer that Claimant made up things about him. The Employer checked this person and saw no firearm. In speaking further with the Claimant, the Claimant told the Employer that he hears things and sees things that others could not and that he was concerned that "bad things were getting ready to take place at the repair shop."

At that time, the Employer placed the Claimant on a paid administrative leave and conditioned the Claimant's return to the workplace on the Claimant submitting to a "fitness for duty" psychiatric evaluation to be performed by a psychiatrist. The Employer further imposed the requirement that the results of the evaluation be shared with appropriate personnel at the Employer, who would then determine whether the Claimant could be reinstated to his duties. The Employer scheduled the fitness for duty evaluation. On November 3, 2020, the Claimant resigned from the employment in lieu of submitting to the involuntary psychiatric evaluation.

REASONING AND CONCLUSIONS OF LAW:

Good Cause Not Shown: 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.* "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 Claimant's subjective understanding. The question of good faith must be measured by an objective standard. *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 [Claimant], 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).

The Claimant made it difficult on himself by not appearing at hearing. Yet even when a party with the burden of proof fails to appear at hearing it is still possible for that party to carry his burden of proof through evidence introduced by the opposing party or through review of the file. *See Hy Vee v. Employment Appeal Board*, 710 N.W.2d 1, 3 (Iowa 2005) (In finding that claimant, who did not appear, had proven good cause for her quit the Court holds that the "fact that the evidence was produced by [the employer] and not by the claimant, does not diminish the probative value of it."). Defaults are limited to nonappearance by an appealing party. 871 IAC 26.14(7). Thus judgment is not automatic when a respondent with the burden of proof fails to present evidence at hearing. Nevertheless it is markedly difficult to carry a burden based on no testimony at all.

Based on this record, the Claimant has failed to prove that the Employer acted unreasonably under the circumstances. More specifically, the Claimant failed to prove that someone in his circumstance would be compelled to *quit* rather than either comply with the Employer's request, or take some less final action. Accordingly, we conclude that the Claimant failed to prove good cause attributable to the Employer for his quit.

No Financial Effect On Claimant: Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 IAC 23.43(3) Rule of two affirmances.

- a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.
- b. However, if the decision is subsequently reversed by higher authority:
 - (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
 - (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
 - (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but **the Claimant will not be required to repay benefits already received.**

We note that since there is no overpayment the only effect on the Claimant is that he may not collect benefits again until he has worked in and been paid insured wages in excess of \$4,930 since November 2, of 2020. It does appear that he has already done so, and thus it appears that our decision today will not adversely affect the Claimant financially.

DECISION:

The administrative law judge's decision dated July 1, 2021 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 the Claimant has, since November 11, **2020** worked in and been 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).

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv