

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

STEVEN J VARGAS

Claimant,

and

CASEY'S MARKETING CO

Employer.

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HEARING NUMBER: 14B-UI-01858

**EMPLOYMENT APPEAL BOARD
DECISION**

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. Two 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:

Steven Vargas (Claimant) worked for Casey's Marketing Co. (Employer) as a part-time cashier from October 9, 2013 until the Claimant voluntarily quit on January 26, 2014.

On January 24, 2014, a customer called and complained that he was overcharged. In a conversation with the Claimant the customer threatened to beat the Claimant with a baseball bat. The customer called back about 45 minutes later and apologized for the threat and stated that he found his receipt. The Claimant did not notify law enforcement, and worked that night his full shift plus 20 minutes longer. On January 26, 2014, the Claimant resigned due to the incident.

REASONING AND CONCLUSIONS OF LAW:

Disqualification:

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 detrimental 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. 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 [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).

We disqualify the Claimant because the Claimant has failed to prove that the quit was for good cause. The customer in this case became angry and rashly made an alarming threat to the Claimant. Yet 45 minutes later the customer repented of this threat, and called back to apologize. This is simply not sufficient to constitute good cause for quitting.

Everyone working in a retail store such as Casey's is exposed to the *possibility* that some member of the public may become violent or, indeed, that the store may get robbed. This alone, of course, cannot constitute good cause for quitting. The law does not require the Employer to eliminate every potential for harm else pay benefits. So long as the Employer had taken reasonable precautions to deal with such problems in general – and the record does not support a finding otherwise - we cannot find that at the time the Claimant quit he was facing such an elevated risk so that his quit was for good cause. During the shift immediately following the threat, the Claimant was not alone in the store. At the time the Claimant quit the customer had already recanted his threat, and the Claimant did not face any greater risk by working at the Employer than any other cashier working any other convenience store.

In this the case is not unlike *Wolfe v. Iowa Unemployment Comp. Comm'n*, 232 Iowa 1254, 7 N.W.2d 799 (Iowa 1943). In *Wolfe* the Supreme Court of Iowa found insufficient reason for quitting after discipline merely because the work was difficult and taxing. The Court noted that “although [Wolfe]’s work was hard, she was required to do no more than the average chambermaid throughout the country, and other chambermaids in said hotel” and that Ms. Wolfe was not being discriminated against, and thus that the difficulty of the work was not good cause for quitting. *Wolfe* at 1257. Facing a risk that was no greater than any other retail cashier is not good cause for quitting. We note in particular that the *Claimant* felt no need to call the police, and that the Claimant finished the shift. These actions of the Claimant tend to corroborate our judgment that once the apology had been made the job was not significantly more dangerous than retail cashier work in general. This being the case, the Claimant has not shown good cause attributable to the Employer for his decision to quit.

Overpayment: Under the rules of Iowa Workforce “[a]n individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment.” 871 IAC 24.27. An individual who quits part-time employment without good cause attributable to the part-time employer may receive reduced unemployment insurance benefits if he or she has sufficient wage credits from other base period employers to be monetarily eligible, assuming the Claimant is otherwise eligible. Wages from the part-time employer a claimant quits voluntarily will not be used for computing future benefits until the individual has earned subsequent wages for insured work equaling ten times his or her weekly benefit amount. 871 IAC 24.27. The rule further provides that “benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer’s account...” 871 IAC 24.27. Thus Casey’s will not be charged, even if the Claimant is able to collect on other wages, unless and until the Claimant requalifies by earning ten times his benefit amount subsequent to the quit from Casey’s and the Claimant files a claim where those wages are in the base period.

DECISION:

The administrative law judge's decision dated March 12, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit but not for good cause attributable to the Employer. Accordingly, he is denied benefits based on this Employer's account until such time as the Claimant has 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).

The Claimant may collect benefits based on wages from other employers, if any, in the base period **if** he was otherwise qualified. The Claimant's monetary eligibility in the *current* benefit year must be determined based on base period wages, if any, earned from employers other than Casey's Marketing Co. Naturally, Casey's Marketing Co. will not be charged for any benefits paid on these other accounts. 871 IAC 24.27. We emphasize to the Claimant that if he has no other base period wages, or if the other base period wages he has are insufficient to qualify him, or if he is disqualified from drawing on those wages, then he will not be able to collect any other benefits. Further, one way or the other, any appeal of today's decision must be made within 30 days of the issuance date of this decision, and any rehearing must be made within 20 days of the issuance date of this decision.

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision, and a determination of whether the Claimant is eligible for benefits based on base period wages other than those with the Employer in this case.

Kim D. Schmett

Cloyd (Robby) Robinson

RRA/fnv