

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

KIM M BERWANGER

Claimant,

and

CASEY'S MARKETING COMPANY

Employer.

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HEARING NUMBER: 14B-UI-07513

**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:

Kim Berwanger (Claimant) worked for Casey's General Stores (Employer) from November 9, 2010 until she quit on June 12, 2014. (Ex. 1). Throughout her tenure at the Employer the Claimant worked various schedules. The Employer made several changes in the Claimant's schedules in order to accommodate her requests. One reason for the Claimant's quit was her supervisors allegedly yelling at her. The Claimant failed to prove such yelling. For the last four or five months of the Claimant's employ she would work until around 5 p.m. on Wednesdays and then started work on Thursday morning at 4 a.m. A second cause of the Claimant's was this feature of her schedule.

REASONING AND CONCLUSIONS OF LAW:

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.* 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)).

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 Employer's testimony that no yelling from the Employer took place and find, consistent with the Administrative Law Judge's decision, that the Claimant failed to prove any excessive yelling.

Since all reasons for the quit must be examined we now turn to the complaint about hours. We recognize that such a mid-week change-over in shifts is unpopular and can be difficult to manage. Here, however, the Claimant had this shift change-over only once a week, with a minimum of ten hours between the shifts. Given that, we cannot find that the Claimant's schedule was so onerous as to constitute a detrimental working condition. Since she failed to prove the yelling, the reasons in combination do not constitute detrimental working conditions. She thus has not proven good cause for quitting.

In addition, we do not find the quit was justified by a change in contract of hire. As shown by our findings the Claimant worked various schedules since being hired and we cannot find a unilateral change in the contract caused by this one shift requirement. Indeed she had worked the split feature for some time, her complaint being the somewhat longer hours on Wednesday towards the end of her employer. This increase in hours on Wednesdays was not a change in the contract of hire. Moreover, even assuming a change in contract based on the Wednesday/Thursday schedule, we find that the Claimant failed to prove a *substantial* change in the contract of hire and so did not prove good cause for quitting under this theory either. 871 IAC 24.26(1)("The change of contract of hire must be substantial in nature...Minor changes in a worker's routine of the job would not constitute a change of contract of hire.")

DECISION:

The administrative law judge's decision dated September 5, 2014 is **REVERSED**. The Employment Appeal Board concludes that the claimant voluntarily quit without good cause attributable to the Employer. Accordingly, the Claimant is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she 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.

Kim D. Schmett

Ashley R. Koopmans

RRA/fnv