BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
Website: eab.iowa.gov

ANTHONY L STEEN		
	: **APPEAL NUMBER:**	23B-UI-09026
Claimant	: **ALJ HEARING NUMBER:**	23A-UI-09026
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
HOME INSTEAD	:	
	:	
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 DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board adds the following to the Reasoning and Conclusions of Law:

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. **But** the individual shall not be disqualified if the department finds that:

…

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence

> immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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:
>
> a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.
>
> *(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.

<u>*The Claimant Voluntarily Left Work:*</u> In *White v. Employment Appeal Bo*ard 487 N.W.2d 342 (Iowa 1992) the Court specifically rejected the notion that a quit that is forced by circumstances personal to the Claimant

cannot be disqualifying. In that case the claimant was off work as an over-the-road truck driver for eight months due to a heart condition. When he returned to the employer he indicated that he would not be able to drive because he was at risk of losing consciousness. The employer told him there was no work available. The Board found this to be a voluntary quit, the claimant appealed, and the Supreme Court affirmed. The Court found that a truck driver's separation from employment due to a non-work related heart condition would be a voluntary separation, even where he was told that there was no work for him by the Employer. Under this analysis the separation here was a voluntary quit.

The Claimant Has Not Shown His Health Condition Was Work Related: Further, as found by the Administrative Law Judge, the quit was not attributable to the employment. Good cause for quitting is not determined by the Claimant's subjective circumstances. The question of good cause 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). In other words, the fact that the workplace may contain triggers for an underlying condition does not render that condition job related for unemployment purposes.

The attribution rule requires that the condition be either caused by or aggravated by the employment – not merely that the condition be incompatible with previously required duties. This is made plain by considering the statutory scheme. Iowa Code §95.5(1) disqualifies persons who voluntarily leave employment. An exception to this disqualification is if they voluntarily leave on the advice of a physician and then return. If just being told you have to quit because of your health meant that you are not disqualified to begin with then why would the Code set out a requirement that you also have to return to work in order to start collecting benefits? A claimant who is told by a physician to quit can requalify only if he returns and offers her services once fully released. 871 IAC 24.26(6)(a); *Hedges v. Iowa Dept. of Job Service*, 368 N.W. 862 (Iowa 1985). But if just having a condition that is inconsistent with your job duties makes that condition work-related then the fully healed requirement would be pointless since an employee who was not "fully released" to perform duties would, under the such an argument, *ipso facto* be suffering from a job related condition and *Hedges* would not apply. The statutory requirements and the binding precedent simply evaporate under this reading of the law and so it is clear this reading is incorrect.

Moreover, this is not a case where the Employer changed the job conditions and this change was inconsistent with the worker's health condition. *See Ellis v. Iowa Dep't of Job Serv.*, 285 N.W.2d 153, 156-57 (Iowa 1979) (claimant's showing that recently installed Christmas tree would aggravate her pre-existing allergies was sufficient to constitute a "quit" that was attributable to her employer). Thus, evidence that the Claimant's duties caused his subjective reaction is not sufficient, by itself, to establish that the underlying condition was job related. But this is about all we have in the record – the Claimant's work caused emotional pain. We do not discount the debilitating effect of this, but the fact of this reaction is not by itself sufficient where, as the Administrative Law Judge pointed out, the job conditions are the usual ones for this type of work. The Claimant has not presented evidence sufficient to carry the burden of proving the condition that caused him

to quit was work-related. Furthermore, even if the condition were work-related, the Claimant did not "before quitting … infor[m] 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." 871 IAC 24.26(6)(b).

Since the condition has not been shown to be job related, the Claimant could only collect benefits if he had been advised by a physician to quit. Iowa Code §96.5(1)(d). The record contains no such evidence. Thus, the Claimant was properly disqualified.

James M. Strohman

Myron R. Linn

RRA/fnv
DATED AND MAILED: NOV 28 2023