

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

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**RYAN J ADAMS**

Claimant,

and

**KEVIN MCCAIN**

Employer.

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**HEARING NUMBER: 11B-UI-17137**

**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:**

Ryan Adams (Claimant) was employed by Agri Star Meat & Poultry (Employer) as a full-time laborer from August 2009 until November 15, 2010, when he voluntarily quit. (Tran at p. 2; p. 10-12). In June 2010, the Employer moved Claimant to the sanitation department. (Tran at p. 11). In the sanitation department the Claimant was required to work with harsh chemicals used to clean stainless steel. (Tran at p. 4). One of these was chorine and one was an acid. (Tran at p. 4). On his last day, the Employer had new equipment installed that had chemical lines running to it. (Tran at p. 3). While working with this new equipment the Claimant's respiratory health suffered because of the chemicals. (Tran at p. 3; p. 6).

On his last day in the employment, Claimant recited his list of complaints to his supervisor. (Tran at p. 6-7; p. 9; p. 12; *see* p. 11 [identifying supervisor]). These included that his nose was being damaged by

the

chemicals in use. (Tran at p. 6-7; p. 9; p. 12). The Claimant then quit over these concerns, including the concern for safety posed by the chemicals. (Tran at p. 3; p. 5; p. 6-7; p. 9; p. 12). The Claimant would have quit over these safety issues alone. (Tran at p. 3; p. 5; p. 6; p. 12).

## REASONING AND CONCLUSIONS OF LAW:

A Legal Standards: 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)). "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.").

"[A] notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." *Hy Vee v. Employment Appeal Board*, 710 N.W.2d 1, 5 (Iowa 2005).

B Good cause: Turning to the reasons given for the quit, we are required to answer three questions: (1) What causes, that are attributable to the employment, contributed to the decision to quit? (2) Do any of those causes, either by themselves or in combination, constitute good cause for quitting? (3) Would those causes, which constitute good cause attributable to the employment, have resulted in the quit by themselves? In answering these questions we are mindful of *McCunn*'s directive that we have to consider that all the reasons that are attributable to the employment may constitute good cause in the aggregate.

The Claimant quit for two reasons. They were concerns over management actions, and concerns for safety. We do not think the management concerns were good cause for quitting so we turn to the safety issues.

The Claimant has established that he was required to work with harsh chemicals with the potential to damage his nasal passages. He further established that his nose was seriously irritated by the chemicals. The Claimant also was concerned because he had no training on how to use the chemicals. *C.f.* OSHA Standard Interpretations of 05/15/1992. As a result the Claimant reasonably believed that continued exposure could hurt his health, we find this to be good cause attributable to the employment.

Finally, as we have found, the Claimant would have quit over the safety issues alone. Thus the Claimant has proven that he quit for a reason that is good cause attributable to the employment.

**DECISION:**

The administrative law judge's decision dated January 26, 2011 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

**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