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

DANIELLE J NORELIUS	:	
	:	**HEARING NUMBER:** 15B-UI-03693
Claimant	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
ALMOST FREE LLC	:	
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 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:

Danielle Norelius (Claimant) worked for Almost Free LLC (Employer) as a full time stock clerk/assistant manager from June 24, 2013 until she quit on March 3, 2015. Prior to January 2015 the Employer would pay employees the Friday of the second week covered by the paycheck. The Employer became concerned that workers were being overpaid when they took off time late in the week of pay-day Friday. In January 2015 the Employer thus switched to paying for work at the end of the week following the end of the pay period. This switch caused one week in which workers received no check but instead were paid for that week at the end of the following pay period. Under a delayed payment system the "missing" week would be made up at the end of the employment when the worker would get an "extra" week's pay during the first pay week following the end of the employment (the check being cut during a week when the ex-worker performed no services for the Employer). Claimant was confused by this. She also felt disrespected because the Employer would sometimes mention her supposed inability to take stress, and her supposed moodiness. The Claimant then quit on March 3 over the pay check timing change, and her concerns about her job environment. The Claimant has failed to prove a detrimental or intolerable work place.

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."). 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).

B Application of Standards: The Claimant asserts several reasons for her quit. We must examine each, and all of them in combination.

First up is the Claimant's assertion that she was not paid for a week and that this went unresolved for several months so she quit. But this is not what happened. What happened is that the Employer had been paying workers during the second week of the pay period. The check was being cut during a week covered by the check. The problem is that the checks were cut before the week ended and so sometimes workers, taking off Friday afternoon, got money for time they did not work. This then had to be corrected later. The Employer then switched to paying in the following week. The worker still got paid, but just with a week's delay. This is legal. This may have looked like check withholding but it was not. When the shift occurred there was a week that checks were not cut, but then the next week they started. An example makes clear.

Suppose the workers were paid on January 2 for work done that week and the week prior. Then the employer makes a change to the one week delay. The workers would work through January 16 but not get a check for on January 16. Instead the check for that pay period would be paid on January 23, and then every two weeks thereafter. This is not a loss of money. It's a commonly used delay in payment. To see where the "missing" money went one need only consider the last week a person works for the employer. Suppose March 6 is a payday, and a worker works through March 6, 2015 and quits. The worker would receive on Friday, March 6, a check for two weeks ending on Friday February 27, 2015 (the two weeks). And then on Friday, March 20 the worker would get the final check, covering the week ending March 6. But the worker did not work at all following March 6. The worker is receiving a check during a week the worker did not work. Here is the "missing" money. The worker gets all the money due, and promptly, but just not during the same week it is earned. The same number of total checks are cut for the same total number of weeks worked, just a week later.

Admittedly the Claimant was confused by this. But confusion itself is not good cause for quitting. 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. 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 find that a person of reasonable intelligence would understand that the checks were shifted a week, but that all work was getting paid, and that this is not a loss of wage but just a delay in receipt. This being the case the delay is not good cause for quitting.

As for harassment and "scolding" and comments about moods, we find nothing sufficiently serious to rise to the level of misconduct. It is generally not good cause for quitting if "[t]he claimant left after being reprimanded."871 IAC 24.25(28). Also rule 24.25(33) states that it is not good cause if "[t]he claimant left because such claimant felt that the job performance was not to the satisfaction of the employer…" The mere fact of the Employer expressing dissatisfaction is several steps away from being threatened with termination, and just is not good cause for quitting. While, obviously, abusive and insulting conduct from a supervisor can be good cause to quit we find that the Claimant has failed to prove anything of this nature. At the most she had to deal with the ordinary travails of daily work that is not good cause for quitting. *C.f. Wolfe v. Iowa Unemployment Comp. Comm'n,* 232 Iowa 1254, 1257, 7 N.W.2d 799 (Iowa 1943)("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").

Finally, taking the various reasons in combination we still find the Claimant did not prove good cause attributable to the Employer for quitting.

DECISION:

The administrative law judge's decision dated April 22, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit but not for good cause attributable to the employer. Accordingly, she is denied benefits until such time the Claimant has worked in and was 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 Board remands this matter to the Iowa Workforce Development Center, Benefits Bureau, for a calculation of the overpayment amount based on this decision.

A portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence was reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv