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

BOUASAVANH V PHALAKHONE	:	
	:	**HEARING NUMBER:** 18BUI-09165
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
SEABOARD TRIUMPH FOODS 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, 96.5-2-A

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 Administrative Law Judge's findings of fact are adopted by the Board as its own. In addition the Board finds that the preponderance of the evidence does not support that the Claimant was harassed or mistreated based on his race. The Board also correct the start date to August 21, 201**7.**

The following analysis is added to the Administrative Law Judge's Reasoning and Conclusions of Law.

In the alternative this case could be analyzed as a voluntary leaving of employment.

Quit. Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5.

On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2).

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).

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 evidence presented by the Employer concerning the Claimant allegations of mistreatment. We find that the Claimant has not proven that he was in fact mistreated to a level that would constitute good cause for quitting under Iowa Code §96.5. Also the Claimant did not prove either compelling personal reasons under Iowa Code §96.5(1)(f), or satisfaction of the pre-departure notice requirements of that paragraph.

Remand Denied. The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Specifically, the Claimant asserts that the interpreter was not of the same "tribe," and that the Claimant also has difficulties with his hearing. He, however, does not identify in what way his responses or questions would have differed. Also the allegation regarding the tribe does not establish that the language spoken was not mutually intelligible. The Claimant and interpreter were each asked if they understood each other and each indicated that they did. Importantly each Board Member has independently listened to the audio recording of the hearing. We detect no *significant* gaps where the Claimant has failed to be responsive. He does ask for a question to be repeated, but he also responded. It is not necessarily an indication of mistranslation to ask that a question be repeated, indeed this happens with native English speakers as well. Also he does ask that the hearing participants speak up, is obliged, and does not mention it again. His level of responsiveness to the questions, and to the testimony is consistent with someone who understands the proceedings.

Our task in assessing the remand request was hampered by the lack of any details in the request such as what the Claimant failed to hear or understand, what the Claimant said he would have said differently, or how what was said seems to have been mistranslated. Without at least *some* brief indication of any sort about such details the Board is left with a bare assertion, and if we were to grant a remand on such allegations alone we cannot imagine any interpreted hearing that would not be subject to a remand just based on the bare claim that something was "lost in translation." Where there is no objection or indication *during the hearing* of a lack of understanding, than at least *some minimal* details should be provided on appeal to the Board before we remand the case. We note for the Claimant that he was 20 days to apply for rehearing and to supply some such details if he has any. Therefore, the remand request is **DENIED**.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv