

the Employer. (Tran at p. 3; p. 4; p. 5; p. 6; p. 7). No change resulted. (Tran at p. 10). The Claimant quit because, as a result of these problems, the environment was not one where she felt the residents were being properly cared for and that she could, as a result, be involved in rendering less than efficacious care. (Tran at p. 10). The precipitating cause of the quit was when the Claimant refused to administer medications without orders and then was told by an unlicensed person that she would instead go ahead and administer those medications. (Tran at p. 13). As prior complaints about this sort of thing had been bootless the Claimant quit.

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:

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- 24.26(3) The claimant left due to unlawful working conditions.
- 24.26(4) The claimant left due to intolerable or detrimental working conditions.
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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 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. 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).

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 Employer did not attend the hearing. We do not automatically find against party for failure to attend and present evidence. 871 IAC 26.14(9)(“a party’s failure to participate in a contested case hearing shall not result in a decision automatically being entered against it.”). Failure to present evidence does, of course, mean that only one side of the story is told. We have, of necessity, found the facts as presented by only one side of the case.

The facts as presented by the Claimant include deviation from procedures and standards of care by her co-workers. We have agreed with the Administrative Law Judge in finding that the evidence, on this record, did establish that these deviations took place. We have also agreed with the Administrative Law Judge that the Claimant reported these deviations from proper practice. We part company with the Administrative Law Judge on the conclusion that the Claimant was not justified in her quit by the inaction in response to her complaint and the continuation of these problems.

The Claimant was a charge nurse and expected to assure that those under her care received competent care. Uncorrected deviation from the standard of care by those caregivers whom the Claimant was responsible for directing could implicate her judgment. Moreover the Claimant, as any nurse, depended on accurate charting in order to make accurate nursing assessments and to take effective nursing interventions. Though the Claimant was generally aware of the possibility of inaccurate patient records based on poor practices, both in the keeping of records and in the performance of cares, she could not know what every inaccuracy was. She could only know there was a higher than usual risk of them lurking in the records. If the Claimant rendered nursing cares based on inaccurate medical records she herself could end up rendering substandard care. A nurse has a perfect right to care about whether they end up doing something that is actually bad for a patient. In addition, the problems identified in this case, if winked at by the Claimant, could have resulted in her negligently practicing incompetent nursing. This in turn would implicate her license. 655 IAC 4.6(2)(c)(discipline for “repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa”). The Claimant has demonstrated that “a person of reasonable prudence would believe, under the circumstances faced by [Claimant], that improper or illegal activities were occurring at [Employer] that necessitated [her] quitting.” O’Brien at 662; accord Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330, 337 (Iowa 1988)(misconduct case). Because of this reasonable good faith belief of the Claimant that her continued employ posed a danger to her competent practice of nursing, we find the Claimant had good cause for quitting.

DECISION:

The administrative law judge’s decision dated November 30, 2007 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.

The Employer also filed an appeal of the Administrative Law Judge's decision. The Administrative Law Judge found in favor of the Employer and thus the Employer's appeal is hereby dismissed as from a party who was not aggrieved by the Administrative Law Judge's decision.

Elizabeth L. Seiser

John A. Peno

RRA/fnv

DISSENTING OPINION OF MARY ANN SPICER:

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. Ms. Paetznick stated she did not write a reason for quitting (Testimony Page 2 Lines 32-33). The claimant alleges there were incidents of forgery of documentation and an accrued list of what she perceived as proper protocol violations, which started October 2nd to December of 2006. A reasonable person would note that if the allegations were so egregious and the claimant was concerned as to how the violations would impact her license then the resignation should have happened after the first current act on October 2nd followed by a forced voluntary quit attributable to the employer. Yet, the claimant waited recalling a series of workplace violations where she failed in some cases to alert the employer to possible policy violation. The claimant's concern was more against the leadership and her environment. (Testimony page 8 Lines 1-10). The weight of the burden of proof was on the employer to respond to the hearing notice prior to the hearing and refute the strong allegations against them. Yet, there was no rebuttal and the claimant's remarks stand as the only evidence put forth without a rebuttal. The employer's testimony was crucial in balancing the decision and challenging the accuracy of the employer's negligence and whether any of the allegations stand as current.

Mary Ann Spicer

RRA/fnv

