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

DANIEL T BELL

Claimant

and

A TO Z DRYING INC

Employer

APPEAL NUMBER: 23B-UI-08667
ALJ HEARING NUMBER: 23A-UI-08667

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

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 it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Administrative Law Judge's findings of fact are adopted by the Board as its own. In addition, the Board finds that the Claimant has proven, for the purposes of this unemployment case, that the health condition at issue in this case was work-related.

REASONING AND CONCLUSIONS OF LAW:

Leaving work 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**.

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.

If the Claimant's restrictions are *not* the result of a work-related condition then this case would fall under the rule of *White v. Employment Appeal Board,* 487 N.W.2d 342 (Iowa 1992), *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985) and *Gilmore v. EAB*, No. 03-2099 (Iowa App. 11/15/2004). When a claimant with a non-work-related condition reaches the end of an approved leave of absence, and then presents the Employer with restrictions that prevent the performance of his prior job duties, then this is a voluntary leaving of work *without* good cause *attributable to the employer*. Since the Claimant was not fully released then under *Hedges* and rule 871 IAC 24.26(6)(a) he would not be allowed benefits until such time that he was *fully* released.

Nor is this changed by the fact that the Employer brought the Claimant back to another position that the Claimant worked for a while. The Claimant left (in fact, quit) that position voluntarily. That leaving is attributable to the employment if, and only if, the changed conditions of that position were attributable to the employment. But if the change in the Claimant's job duties was the direct result of the Claimant's **non**-work health condition, then the quit would also be the result of the non-work health condition. Afterall why punish an Employer for accommodating a condition where if they refused they would not have to pay benefits under the fully-released rule. As the Claimant himself argues, the law should be interpreted to encourage employers to keep workers working.

On the other hand, if the Claimant's condition is job related then the Claimant could have not returned at all, and been granted benefits. He did return, because the Employer accommodated his restriction. That accommodation, of course, was a change in the Claimant's contract of employment. If that change is of the sort that would constitute good cause for quitting, then assuming the restrictions were work related, then that change becomes attributable to the employment. The regulation on change of contract of hire states:

> 24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

871 IAC 24.26(1). We do think that a total elimination of any productive job duties is a substantially negative change in a contract of hire. There is the subjective sense of spending the day doing something of no worth, and there is the objective result of damaging the Claimant's chances at advancement, or even getting another job in his field. But, again, if this change were caused by an attempt to accommodate a non-work condition then the change is not attributable to the employment, whereas if this change was prompted by a request to accommodate a work-related condition then it is attributable to the employment. In other words, Claimant is not disqualified for leaving work because accommodation of a **work-related health condition** results in a substantially negative change in contract. The only issue then would be whether the Claimant has to give notice that the accommodation is insufficient. *Compare* 871 IAC 24.26(6); *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 446-47 (Iowa 1993) *with Barber v. EAB,* No. 0-820 (Iowa App. 11/24/2010). Since the Claimant gave two-week notice we do think his notice was sufficient under *Cobb.* Furthermore, it is clear that the Employer felt it had no other safe way of accommodating the Claimant and no alternative accommodation would be forthcoming.

We thus have focused on the key factual issue: Has the Claimant proven that his condition was work related. We think that he has. Under the foregoing analysis benefits are allowed.

This said we note that by statute a claimant is disqualified for any week during which the claimant "is receiving or has received payment in the form of …[c]ompensation for temporary disability under the workers' compensation law of any state…" Iowa Code §96.5(5)(a)(2). This disqualification, however, does allow for the collection of unemployment that may exceed the "[c]ompensation for temporary disability." In such cases "the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration." Iowa Code §96.5(5)(b). **The Claimant therefore is required by law to report any Workers' Compensation benefits of the sort that would offset unemployment**.

Finally, we note for the edification of the parties that "[a] finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States." Iowa Code §96.6(4). This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have **no effect** otherwise. See also Iowa Code §96.11(6)(b)(3)("Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A…)

DECISION:

The administrative law judge's decision dated September 28, 2023 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

Again, the Claimant is required by law to report any Workers' Compensation benefits of the sort that would offset unemployment.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv
DATED AND MAILED: NOV 16 2023