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

KIMBERLY S MEYER	:	
	:	**HEARING NUMBER:** 10B-UI-01093
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
SITEL OPERATING CORP	:	
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 ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two 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:

Kimberly Meyer (Claimant) was employed by Sitel Operating Corp. (Employer) from March 22, 2004 until September 24, 2009 as a full-time customer service professional. (Tran at p. 3; p. 9). She was hired for a "dialing" position but later was transferred to the quality assurance department. (Tran at p. 3). The bulk of her time was in quality assurance. (Tran at p. 3-4; p. 12). The focus of dialing was to dial for the company when they are needed, whereas the quality assurance workers will listen to other associates. (Tran at p. 4).

On August 26, 2009, the Claimant received a final written warning regarding her attendance. (Tran at p. 5). The warning notified her that her job was in jeopardy if she missed any more work. (Tran at p. 6). The Employer does not record the reasons for absences. (Tran at p. 5). The Claimant was absent again on September 22, 2009. (Tran at p. 5). She was ill that day, and properly reported the illness. (Tran at p. 11).

On September 24, 2009, Human Resources Manager Angela Staley and Coach Chrystal Christensen met with the Claimant about the final absence. (Tran at p. 5; p. 9). The Employer offered the Claimant the opportunity to continue working, but her position would be changed from QA to a dialing position full time. (Tran at p. 5). The alternative was to be fired. (Tran at p. 5; p. 6). Both parties understood that the dialing position was a demotion. (Tran at p. 6; p. 10). The Claimant declined to accept the change and signed a resignation. (Tran at p. 8-9; p. 12). The Claimant objected because it was a demotion and a substantial change in her job duties. (Tran at p. 12).

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.

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.*

871 IAC 24.26(1) provides:

> The following are reasons for a claimant leaving employment with good cause attributable to the employer:
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> A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifying 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 of the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. *See Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* The test is whether a reasonable person would have quit under the circumstances. *See Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988); *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

We think the Claimant has proven good cause for her quit. The evidence from the parties shows that the change in positions was, in fact, a demotion. She would now be working along people whose work she used to review. We think a reasonable person would chose to quit rather than be forced out of a long-time position to accept a backward step.

Under some circumstances, an employee must give prior notice to the employer before quitting due to a change in the contract of hire. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). Although we are not convinced that *Cobb* applies to cases such as this one, we do not reach the issue since even if *Cobb* applies the Claimant is not disqualified. Where *Cobb* applies an employee is required to take the reasonable step of informing the employer about the changes that the employee believes are substantial and that she intends to quit employment unless the conditions are corrected. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993). Here the Claimant was facing an ultimatum to accept the demotion or be fired. There was no alternative allowing her to remain in her current job. Under such circumstances the *Cobb* notice would be an exercise in futility and could not be fairly required as a condition of receiving benefits. *Brandenburg v. Carmichael*, 192 Iowa 694, 704, 185 N.W. 486, 490 (1921)(citing *Smith v. McLean*, 24 Iowa 322, 326)(law does not require "vain and useless labor"). The Claimant has proved that she quit for good cause attributable to the Employer and is therefore eligible for benefits.

DECISION:

The administrative law judge's decision dated March 4, 2010 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. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside.

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John A. Peno

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Elizabeth L. Seiser

RRA/fnv