

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

KRISTA P GODAT-BLASDELL

Claimant

and

REM IOWA COMMUNITY SERVICES INC

Employer

HEARING NUMBER: 18BUI-07790DC

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

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Employment Appeal Board **REVERSES** as set forth below.

The matter comes before the Board on an augmented record pursuant to a remand from the Clinton County district court under Iowa Code §17A.19(7). Citations are to the certified record of the hearing which was prepared to be filed at the time the District Court granted remand.

FINDINGS OF FACT:

Krista Godat-Blasdell (Claimant) worked for REM Iowa Community Services (Employer) as a full-time program supervisor for from March 1, 2016 until she quit on June 27, 2018. (Cert. Rec. at p. 28).

The Employer serves clients with mental illness and brain injuries. (Cert. Rec. at p. 29). In April 2018 insurance and program cuts forced the Employer to increase the staff to client ratio. (Cert. Rec. at p. 41). The Employer then had one staff person assigned to each home. (Cert. Rec. at p. 41; p. 48; p. 61). Around May 31 resident BD moved into the house that the Claimant was responsible for. (Cert. Rec. at p. 62). BD is a difficult client who needs 24/7 attention to deal with issues of acting out and occasional violence. (Cert. Rec. at p. 41-44; p. 47). This behavior affected other resident's behavior negatively. (Cert. Rec. at p. 44).

On June 27, 2018, the Claimant received a phone call from staff at the client home she oversaw asking if she had seen client "AO." (Cert. Rec. at p. 29). The Claimant asked "why" and the staff member stated the Claimant needed to come to the house because AO was acting very different. (Cert. Rec. at p. 29). The Claimant asked how she was acting differently and the staff member related she was verbally aggressive and shoved her roommate and had a "20 mile stare." (Cert. Rec. at p. 29). The staff member tried to get AO to take her medication and AO said, "Fuck you bitch" and walked out the door. (Cert. Rec. at p. 30).

The Claimant arrived at the house a short time later and AO was outside. (Cert. Rec. at p. 30). The Claimant suggested AO take her medication and then they go for a ride and AO took her medication. (Cert. Rec. at p. 30). AO, who was scheduled to reunite with her family in Nebraska, said she was not going to Nebraska and the Claimant asked if she was scared. (Cert. Rec. at p. 30). AO was acting up and the Claimant wanted to take her to a hospital for a psychiatric evaluation. (Cert. Rec. at p. 30-31). The Claimant took AO to the Employer's office to pick up her new insurance card. (Cert. Rec. at p. 30). Program Director Nicole Guzman was in the office. (Cert. Rec. at p. 31). The Claimant spoke to Guzman about taking AO for an evaluation. Ms. Guzman was "on the fence" about the Claimant's plan. (Cert. Rec. at p. 31; audio at 13:55).

At the hospital AO became aggressive. (Cert. Rec. at p. 31). Claimant warned the hospital staff about her mental status. (Cert. Rec. at p. 31). AO wanted to walk up and down the hall. (Cert. Rec. at p. 31). The emergency room does not allow this. (Cert. Rec. at p. 31). When a security guard tried to tell AO this, AO became upset with the officer, and then shoved a nurse. (Cert. Rec. at p. 31). She also grabbed the Claimant's plastic cup and threw it against the wall. (Cert. Rec. at p. 31). The security guard told the Claimant if she could not control AO they would need to leave. (Cert. Rec. at p. 31). The Claimant replied that is why they were there but they did leave. (Cert. Rec. at p. 31). Once they were back in the car, the Claimant drove back to the office and told a staff member to tell Ms. Guzman what happened. (Cert. Rec. at p. 32). The Claimant then drove around with AO for a while before calling the client home and asking the staff member to take the other two clients out for ice cream so no one would be there when the Claimant returned with AO. Claimant and AO then went in the house. (Cert. Rec. at p. 32). AO asked the Claimant to sit in her room and then took a shower. (Cert. Rec. at p. 32). Once she got out of the shower she yelled and pushed the Claimant asking why she was in her room. (Cert. Rec. at p. 32). The Claimant was able to calm her and decided to take her to another hospital that was approximately 25 minutes away. (Cert. Rec. at p. 32).

On the way to the second hospital the Claimant stopped to get gas and AO got out of the car and did not want to get back in the car. (Cert. Rec. at p. 32). The Claimant called Ms. Guzman who also spoke to AO and AO did return to the car. (Cert. Rec. at p. 32). On the way to the hospital AO undid her seatbelt and opened the car door. (Cert. Rec. at p. 32-33). The Claimant held her in place by holding the seatbelt in the correct position until she could stop the car at which time AO exited the vehicle and the Claimant could not stop her because staff is not allowed to restrain clients alone. (Cert. Rec. at p. 33). The Claimant followed AO in her car while AO called her names and said she was not going to the hospital. (Cert. Rec. at p. 33). The Claimant said, "Why don't we go to DeWitt and get tacos." (Cert. Rec. at p. 33). In response AO got back in the car but soon after undid her seatbelt again and tried to jump out of the car. (Cert. Rec. at p. 33). The Claimant followed her in her car and called Ms. Guzman and asked if the van with a divider between the back passengers and the driver was available but Ms. Guzman told her it was not because it was in Iowa City. (Cert. Rec. at p. 33-34). Ms. Guzman told the Claimant to try to put AO in the back seat where there were child locks but the Claimant feared AO would attack her from behind and did not want to do that. (Cert. Rec. at p.

34). Ms. Guzman told the Claimant to get AO back in the car. (Cert. Rec. at p. 34). Soon after AO got back in the car and they drove approximately two miles before AO got out again and started walking across the highway. (Cert. Rec. at p. 34). When the Claimant caught up with her, and while the Claimant was right next to her, AO grabbed her wrist and slammed her hand into the side of the car. (Cert. Rec. at p. 34).

Page 3
19B-UI-07790DC

The Claimant called the office and spoke to Area Director Angie Thompson who stated it was too late for a court committal and she would call a mental health center. (Cert. Rec. at p. 34). AO had an appointment at 4:00 p.m. with the mental health center and it was 2:30 p.m. at this time. (Cert. Rec. at p. 35). Soon after that, AO got out of the car again and the Claimant lost her. (Cert. Rec. at p. 35). As she got out of the car the third time AO had a fingernail file and said to the Claimant that she would stab the Claimant and her kids. (Cert. Rec. at p. 36). She told the Claimant that the file was sharp and she would put it through the Claimant's neck. (Cert. Rec. at p. 36). Prior to the staff reductions, two or three staff would have been sent to handle similar situations like the one with AO. (Cert. Rec. at p. 44).

The Claimant called the office and Ms. Guzman instructed the Claimant to find her. (Cert. Rec. at p. 35). The Claimant drove around for one hour without locating AO and then Ms. Guzman instructed her to call the police. (Cert. Rec. at p. 35-36). The Claimant returned to the office and Ms. Guzman asked what she was doing there. (Cert. Rec. at p. 36). The Claimant went in the conference room and got a laptop and worked on the incident report, and called the police. (Cert. Rec. at p. 36). Ms. Guzman and other members of management were preparing to go out to look for AO and trying to call her. (Cert. Rec. at p. 36).

As several employees were looking for AO, she finally answered her phone but would not state where she was located. She had a fingernail file and was threatening to hurt herself. The Employer wanted AO signed out from services because then the Employer is not responsible for her. During the last hour of the search the staff member from the Claimant's client house called because another client was running around naked and hitting other people. The Claimant went home to work on the incident report and decided instead to voluntarily quit her job. (Cert. Rec. at p. 37). She then notified Ms. Guzman she was quitting her job with the Employer because of her safety concerns. (Cert. Rec. at p. 37; p. 60-61).

Had the Employer had its previous staffing levels the Claimant could have called for backup to assist with handling AO. (Cert. Rec. at p. 37; p. 38). When the Claimant complained about staffing levels before her quit the Employer was unable to do anything about it. (E.g. cert. rec. at p. 47-48; p. 55-56).

On December 20, 2018 the Employer received a Citation and Notification of Penalty from the Iowa Occupational Safety and Health Administration. Citation one was a serious violation based on "Direct Support Professionals (Community Residential Staff) were exposed to incidents of violent behavior by residents that have resulted in bites, strains, broken skin, bruising, scratches, soft tissue trauma and injuries to the head and torso from punches kicks and forceful grabs." (Evidence on Remand). The inspection date was July 24, 2018.

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.

Page 4

19B-UI-07790DC

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).

Where an employee quits because of allegedly unsafe 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).

As we noted in our prior decision there is no doctrine of acquiescence that applies to quitting over detrimental working conditions. This is why "a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions." *Hy Vee v. Employment Appeal Board*, 710 N.W.2d 1, 5 (Iowa 2005).

B. Application of Standards: This case is, in many ways, remarkably similar to a case decided 75

years ago by the Iowa Supreme Court. In *Forrest Park Sanatorium v. Miller*, 233 Iowa 1341, 11 N.W.2d 582 (Iowa 1943) Ms. Miller was a LPN working at a “sanitarium for patients with mental and nerve ailments.” *Forrest Park* at 1342. Forrest Park maintained a day shift and night shift. “[T]he inmates of [the night shift] ward were violent and in restraint; [and] on one occasion an inmate unshackled herself and attempted to attack” Ms. Miller. *Forrest Park* at 1342. Ms. Miller “deemed herself incapable of handling its patients and was afraid to go into that ward” and suffered “a nervous breakdown [and] the condition of her health compelled her to give up her position in July, 1939...” *Id.* at 1343. She then was rehired on the understanding she would not go to the night shift. Forrest Park then “proposed to change appellee to the night shift in the other building because another nurse had asked to be relieved therefrom ‘for awhile’” *Id.* at 1342. Ms. Miller refused and then became unemployed. The Court affirmed the agency allowance of benefits on the theory that Forrest Park had removed Ms. Miller from the day shift position, and Ms. Miller had good cause to turn down the night shift position.

Although the clinical descriptions have changed the Claimant worked in a very similar circumstance to Ms. Miller. Like Ms. Miller she was concerned for safety, and by the time of her resignation had been assaulted. And like Ms. Miller she was facing a *continuing* change in working conditions that had the *potential*, but not the certainty, of making things worse. Granted Ms. Miller was rehired upon the understanding that she was only going to work the day shift, and then was forced to what she saw as the dangerous shift. But we are concerned with safety and not guarantees. The Claimant had no reason to expect that the Employer was going to increase staffing any time soon. It was in this scenario that the Claimant was then actually assaulted, not just threatened with assault like Ms. Miller. The Claimant then, understandably, became more concerned with safety. Again *O'Brien* instructs that "it is not necessary to prove [unsafe conditions], only that it was reasonable for the employee to believe so." This Claimant's safety concern was more than mere fantasy, and we find that it was an objectively reasonable fear under the circumstances. The OSHA findings bear this out. Moreover to the extent that this was based on her emotional reaction caused by the assault *by a client* any resulting sensitivity was work-related. We conclude the Claimant quit for good cause attributable to the employment and allow benefits. *C.f. Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa 1956)(Good cause may be attributable to "the employment itself" rather than 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").

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)(emphasis added). 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 August 15, 2018 is **REVERSED**. The Employment Appeal Board concludes that the Claimant quit for good cause attributable to the employment. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

Kim D. Schmett

Ashley R. Koopmans

