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

ADOLFO N MENDOZA	:	
	:	**HEARING NUMBER:** 11B-UI-16974
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
OLYMPIC STEEL IOWA INC	:	
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 DENIED

The Employer 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:

Adolfo Mendoza (Claimant) worked for Olympic Steel (Employer) as a full-time crane operator from April 5, 2010 until he quit on November 6, 2010. (Tran at p. 2; p. 4-5). The Claimant was hired into second shift and had worked the entire time on second shift. (Tran at p. 3; p. 5). The Claimant was told by his supervisor that he was might get transferred to third shift. (Tran at p. 2). The Claimant was never told that he was actually to start on third shift, and the Claimant was never moved to third shift. (Tran at p. 5; p. 6 [“I think you are going to go to third shift”]; p. 7). The Claimant voluntarily quit his employment because he thought he might get moved to third shift. (Tran at p. 2; p. 6).

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:
> …
> 24.26(1) 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). 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). 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.*

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…. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
> …

(28) The claimant left after being reprimanded.
(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.
…
(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

The Board recognizes that the cited subrules of 24.25 are not directly on point in this case. The fact is they describe situations that have even more cause for quitting than was present in this case, and still these subrules make clear that such situations are not good cause. Subrules 24.25(28), 24.25(29) and 24.25(33) all deal with situations where someone has made assumptions about future action by the Employer that still does not justify a quit. So simply being reprimanded does not justify a quit based on the assumption that worse is coming. Also having looming layoffs will not justify quitting before the layoff materialize. Similarly, having poor work performance does not justify a preemptive quit where the employer has not asked the person to leave. The upshot of these rules is that a claimant who quits out of fear of the employer taking some action will not get benefits if they, in fact, "jump the gun." This is based on the common-sense idea that ordinarily the judgment regarding what action to take on workplace issues is left to the employer.

Looking specifically to rule 24.26(1) it is clear that what justifies quitting is a "willful breach" of the contract of hire. Here there was no more than a possibility that the Employer *might* breach the contract of hire. This is not a "willful breach." Moreover the change must be substantial. But here the change was an anticipated future event. It was no more than a possibility, that is, it was entirely insubstantial. The change had yet to materialize, when the Claimant quit. There was no change in the contract, and the Claimant had no reliable basis for believing that any such change was imminent. Applying common sense and prudence to this case we find that the Claimant has no proven that he had good cause for quitting.

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 IAC 23.43(3) Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.
(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

DECISION:

The administrative law judge's decision dated January 28, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant quit but not for good cause attributable to the employer. Accordingly, he is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)"g".

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

RRA/fnv