

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

SUNNY R ENGLAND

Claimant,

and

RECOVER HEALTH SERVICES LLC

Employer.

:
:
:
:
:
:
:
:
:

HEARING NUMBER: 10B-UI-09699

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

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, 871 IAC

DECISION

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. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

We enter the following findings of fact based on the information in the file pursuant to agency rule. 871 IAC 26.8(5); 871 IAC 26.14(9); *see also Diwan LLC v. Iowa Dept. of Commerce*, 0-501 (Iowa App. 8/11/2010).

Sunny England (Claimant) worked as a full-time Home Health Aide for Recover Health Services LLC (Employer) from March 16, 2006 through the date of her quit on May 20, 2010. (Fact Finding). (We note that the Claimant apparently worked for a predecessor company of this Employer until June 15, 2009, when the Employer took over the business operations).

According to the notes of the fact finder the Claimant supplied the following information to the agency:

I did quit. I was in an abusive situation and he broke restraining orders and he spent 5 days in jail for abusing my kids. He wouldn't leave me alone and I moved [far away]. The employer knew that I was going to move in August but I had to leave suddenly because of the situation. I worked really hard and always did my best. I just had to leave the area.

According to the notes of the fact finder the Employer supplied the following information to the agency:

I have that she quit. The claimant quit by failure to show up for work and no further contact was made.

We find the facts based primarily on these statements. We thus find that the Claimant left her job because of understandable and justifiable concern for the safety of her family. The Claimant was forced to leave suddenly. The situation that caused this was not due to the employer or the employment. The Claimant did not call the Employer before leaving. Her separation was treated as job abandonment on May 20, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 provides:

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.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2).

The Claimant admits that she quit, which corroborates what the Employer described. The burden thus shifts to the Claimant to prove that she quit for good cause *attributable to the employment*.

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.

“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).

Here the evidence from the Claimant shows that the cause of her quit was her decision to move. While she had an excellent cause for moving it was not attributable either to the employer or the employment itself. The cause was attributable to Claimant’s domestic situation. Over the years efforts have been made to amend the Employment Security Law to qualify claimants who quit over domestic abuse, stalking, or similar safety concerns. 17 Iowa Admin. Bull ARC 8571A (12/16/1998); SSB 3044 (82nd GA 2008). The efforts have not passed, and until they do we remain bound by the current law. We completely understand that the Claimant had good reason for moving, but the law only allows benefits if it is a reason attributable to the employer, or to the employment. The reason is not so attributable, and so benefits must be denied.

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)