



**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer testified that the claimant quit even though Doug Fuller tried to convince her to stay. When Fuller contacted Sandy Labaugh at the convention, Ms. Labaugh advised him to accept the claimant's resignation. The claimant argues that she was only *thinking* about quitting. (Tr. 13)

The claimant was upset for several reasons: 1) sick kittens were being put up for adoption; 2) incomplete medical records were being kept; 3) sick cats were allowed in the roam room; and 4) and the shelter was short-staffed. (Tr. 5-8) The claimant's witness, Sarah Young, credibly testified that Ms. Labaugh told her "... things got f'd up today and she fired Joy..." (Tr. 18) Ms. Labaugh was upset because she received a call "while on vacation." The employer acknowledged to Ms. Summer that the claimant was upset with the way things were going at the shelter and that she fired the claimant. (Tr. 18) Although I find this case to be a close call, I am swayed by the claimant's testimony that she was only thinking about quitting and simply returned to her duties after her discussion with Mr. Fuller. The claimant's witness, Ms. Young, corroborates the claimant's version that she was, in fact, discharged.

And even for the sake of argument if this case were considered a quit, I would find that the claimant quit with good cause attributable to the employer. The claimant raised, in good faith, her concerns about what she believed to be illegal activities (incomplete medical records, sick kittens being adopted out, inter alia). The employer took no action to investigate. The court in O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993) held that the claimant need not prove that the employer's actions that triggered the quit were, in fact, illegal. Rather, the court used the reasonable person standard, which indicates if a reasonable person would believe the employer's actions were illegal, then there is good cause to quit. I would conclude that the claimant reasonably believed the employer's action were illegal and in accordance with O'Brien her quit would not be considered a disqualifying event.

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John A. Peno