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

TERRI J BENISCHEK	: :
Claimant,	: HEARING NUMBER: 08B-UI-07419 :
and	: EMPLOYMENT APPEAL BOARD : DECISION
5 O'CLOCK INVESTMENTS LLC	: DECISION

Employer.

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

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is AFFIRMED.

Elizabeth L. Seiser	
Monique F. Kuester	

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 claimant voluntarily quit because she was not paid for one week of vacation (June 29th - July 7th). The claimant was given one week off from Christmas through New Year for which the employer paid her what the latter called a 'bonus,' and not vacation pay.

The claimant maintains that she was told at the start of her employment in April, she would receive one week of vacation pay a year (Tr. 7, lines 24-26); Tr. 8 lines 8-11), which the employer corroborates in his testimony. (Tr. 10, lines 14-18) However, by the employer's own testimony, the claimant's paid time off in December was not vacation, as she hadn't been there a year yet.

The record shows, however, that the claimant had worked for a year (April 2007 – April 2008) when she requested vacation leave in March to be taken in early summer, which she was allowed, but not paid. Any reasonable person would have had the same understanding as the claimant. Based on these circumstances, I would conclude that the claimant experienced a change in her contract of hire for which she had good cause to quit attributable to the employer. Benefits should be allowed provided she is otherwise eligible.

John A. Peno	

AMG/ss