

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