

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

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AMANDA J ELMORE

Claimant,

and

VICTOR PLASTICS INC

Employer.

HEARING NUMBER: 08B-UI-04642

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)**

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**.

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Elizabeth L. Seiser

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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 record establishes that Victor Plastics intended to terminate all its employees as of midnight, April 13<sup>th</sup>, 2008. (Tr. 9, lines 1-3) Employee meetings were held without any Human Resources representative present. Applications to work for a new owner were distributed prior to April 13<sup>th</sup> midnight deadline. It was understood that anyone completing the application would be hired and interviewed over a 90-day probationary period. However, there was no guarantee that all employees would continue to have jobs.

I find this case analogous to Dico v. Employment Appeal Board, 576 N.W.2d 352 (Iowa 1998) wherein the court held that an offer of work and the claimant's refusal must occur *after* the claimant has applied for unemployment benefits in order to effect a disqualification. See also, 871 IAC 24.28(8). Here, the claimant had not yet separated from her current employment when she refused to work for the new owners. Additionally, based on the terms offered for her continued employment, she would have experienced a change in her contract of hire for which she was justified to quit with good cause attributable to the employer.

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John A. Peno

A portion of the claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (documents) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

