

AMG/fnv

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 quit because she felt that the employer was allowing employees to break the law in reporting tips. The employer told employees to report 50 cents/hour when tips were \$20-\$500/day. Even if the employer had an arrangement with the IRS, a reasonable person would believe that reporting as the employer advised might, in fact, be illegal. 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.

John A. Peno

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The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

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