

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

BARBETTE A KREBS

Claimant,

and

NURSE FORCE INC

Employer.

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HEARING NUMBER: 08B-UI-04224

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**.

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 even though the claimant testified that she was terminated. The claimant was told by two different people that she wasn't fired. The claimant admits this testimony, but indicated that she wanted Sherri to call her, no one else.

The employer does not dispute that the claimant quit. The claimant's supervisor became upset and punched the claimant's daughter in the chest. The supervisor also attempted to prevent the claimant from leaving the meeting. (Tr. 18) I find that the supervisor's behavior created an intolerable working condition for which I would conclude that the claimant was justified in quitting. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005) where the court held that the notice of intention to quit set forth in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993) does not apply to quits involving detrimental and intolerable working conditions. The Hy-Vee case also overturned Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa App. 1996) involving quits due to unsafe working conditions. In addition, I would note that the employer failed to cross-examine or dispute the claimant's testimony. (Tr. 18) Based on this reasoning, I would allow benefits provided the claimant is otherwise eligible.

John A. Peno