

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

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**TAMMY J VORWALD**

Claimant,

and

**BENNETT MACHINE & FABRICATION  
INC**

Employer.

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**HEARING NUMBER: 10B-UI-03214**

**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: 96.4-3**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, 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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Monique F. Kuester

**CONCURRING OPINION OF JOHN A. PENO:**

I agree with my fellow board member that the administrative law judge's decision should be affirmed; however, I would note that the record establishes that the claimant was working on a machine during the time she had nonwork-related medical restrictions. The claimant was subsequently 'bumped' to layoff status because another employer who had work-related injuries was assigned to her machine. (Tr. 15, lines 23-30) She was 'let go' when her FMLA expired on March 12<sup>th</sup>, 2010. For this reason, I would conclude that the claimant was terminated prior to a return from a leave of absence. Thus, she is not obligated to return to the employer to offer services after the expiration of the leave of absence. The rationale being that the claimant no longer has an employment relationship to which the claimant can return. Porazil v. Jackman Corporation, August 27, 2003, Court of Appeals Unpublished Case No. 3-408/02-1583.

Additionally, I would comment that claimant need only establish that she is "...physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by other as a means of livelihood." See, 871 IAC 24.22(1). Once she becomes able and available, she should contact the Iowa Workforce Development Center, Claims Section, with such proof.

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John A. Peno

AMG/ss