

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

NATHAN A SCHELLHORN

Claimant

and

TRANSCO RAILWAY PRODUCTS INC

Employer

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HEARING NUMBER: 15B-UI-10944

**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: 96.5-2-A, 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Nathan A. Schellhorn, worked for Transco Railway Products, Inc. from August 3, 2015 through September 8, 2015 as a full-time helper. (7:45-8:26; 8:57; 26:02-26:) The Claimant's job function was to support his car-man by performing welding, grinding, torch-work, and railcar repair. (8:39-8:49; 26:45-26:55) The Claimant received training via a manual for working in confined spaces, but did not actually get into a confined space. (12:41-13:00; 41:50-42:07 Exhibit 1)

The Claimant had worked several weeks before having to descend into the bottom of a railcar on September 1, 2015. While down there for the first time, he was unable to catch his breath. (31:35-31:42; 31:51-32:09) The Employer transported him to the hospital around 6:00 or 7:00 a.m. and remained with him until he was discharged. (27:10-27:16; 32:15-32:36; 32:28-32:30) Mr. Schellhorn suffered a severe panic attack because he had never before been in a confined space situation. (28:48-29:08; 32:50) He did not know he was claustrophobic. It took him several hours to regain his regular breathing. (32:35-32:44)

The doctor advised him to "...stay out of that situation..." and wrote him a note advising him to "...avoid any known causes of anxiety." (32:47-32:52; 33:05-34:18; 35:07-35:17; 35:22)

The Claimant reported to work the rest of the week performing other job duties that didn't involve working in the bottom of a railcar. (30:15-30:18; 35:41-36:00) The following Tuesday, September 8th, the Employer asked the Claimant to get in the bottom of a railcar to clean it. (27:25; 30:25-30:27; 36:03-36:27) Ms. Schellhorn told the Employer that he was uncomfortable after what happened on the 1st. (27:06-27:09; 27:28-28:00) He asked the Employer if he could just continue to perform other work, as he had done the first five weeks without getting in the bottom of a railcar. (28:23-28:27; 29:27-29:39) The Employer told him they had no other work. (28:30; 29:43-30:36) The Employer told him that all employees, except the secretaries, are required to work in the bottom of railcars. The Claimant was able to perform all other aspects of his job to the Employer's satisfaction. (40:58-41:14) The Claimant quit.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(5) provides a quit is with good cause attributable to the employer when, "The claimant left due to intolerable or detrimental working conditions."

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The Employer testified that the Claimant went through an 8-week class for working in confined spaces. (20:43-20:52) However, we note that the Claimant had only worked for the Employer for a little over five weeks. Additionally, the training he received was very limited, in that it involved reading a manual and answering multiple choice questions on a test. Mr. Schellhorn was given no prior physical experiential training from which to learn how to perform, or come to know of his claustrophobia.

The record established that the Claimant's job was comprised of numerous other duties which both parties concur he performed satisfactorily. The Claimant's doctor advised him to avoid this type of situation. Because the Claimant was able and available for work involving all other aspects of his job, but for the Employer's inability to accommodate him, we conclude that the Claimant had no choice but to quit. For this reason, we conclude that the Claimant's quit was with good cause as continued employment would have created a detrimental and intolerable working condition for him. We would also note that should the Claimant overcome his phobia and receive a release to return to work, he should return to the Employer and offer his services. See, Iowa Code section 96.5(1)"d".

DECISION:

The administrative law judge's decision dated October 16, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit his employment due to detrimental and intolerable working conditions. Accordingly, he is allowed benefits provided he is otherwise eligible.

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 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.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv

DATED AND MAILED: _____

Copies to:

NATHAN A SCHELLHORN
406 COREY ST
FAIRBANK IA 50629

TRANSCO RAILWAY PRODUCTS INC
C/O TALX UCM SVCS INC
PO BOX 283
ST LOUIS MO 63166-0283