

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

LORI L POWERS

Claimant,

and

LAKE SHORE TRAM INC

Employer.

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HEARING NUMBER: 08B-UI-08140

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 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. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Lori L. Powers, worked for Lake Shore Tram, Inc. from July 11, 2007 through August 12, 2008 as a full-time administrative assistant. (Tr. 3, 8) The claimant suffered a work-related injury on June 10, 2008 (Tr. 3, 14) when she "... tripped over one of the dogs in the shop... and cut... [her] arm..." (Tr. 4) Ms. Powers had previously complained about the dogs in the workplace because she had fallen and cut her arm in the past. (Tr. 24-25) She went on a medical leave of absence.

On June 13th, 2008, Leah Anderson (office manager) contacted the claimant indicating that the employer needed someone to be available for work every day. (Tr. 6, 20-21) Ms. Powers believed her job was in jeopardy, and requested that the employer mail her paycheck to her. The employer denied her request, stating that per company policy, she must pick up her last check (\$1100) (Tr. 6, 24) , even

through Ms. Anderson had it with her with she attempted to visit with the claimant at her home on June 18th. (Tr. The employer then posted her position on June 19th. (Tr. 6-7, 19)

On June 26th, the claimant contacted the employer to verify that she did not quit, but believed that she was terminated due to her injury. (Tr. 7, 11, 19, Exhibits 2-p.2, 3) In the meantime, the employer's worker's compensation policy had lapsed and the claimant's medical bills (\$3500) that related to her injury went unpaid, and were heading into collection status. (Tr. 4, 5, 7, 10, 13) The employer had promised to pay her medical bills. (Tr. 21) The claimant became frustrated since she provided the employer with the accident report they requested on three occasions to no avail. (Tr. 14, 19) Finally, she hired an attorney since the employer would not pay her medical bills. (Tr. 18) He advised her to file for unemployment benefits, which were denied. Ms. Powers received a full medical release to return to work on August 12, 2008 (Tr.3, 8-9); however, she refused to return to work based on the employer's failure to pay her medical bills and their continued lack of worker's compensation insurance coverage for her June 10th work-related injury.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2007) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employer no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5...

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

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."

Initially, both parties offered conflicting testimony as to whether or not the claimant had been terminated as a result of her June injury. However, there is no dispute that the claimant ultimately quit when she refused to return to work after she received a full medical release on August 12th. (Tr. 3, 8-9) Ms. Powers' decision to quit hinged on the fact that the employer failed to maintain workers' compensation insurance, which impacted her ability to keep abreast, financially, of her mounting medical expenses. (Tr. 4, 5, 7, 10, 13) Her continued frustration over waiting for these expenses to be paid created a negative impact on her emotionally and financially as well. The reason for her injury in the first place involved what she perceived to be a safety hazard in the workplace, i.e., unkept dogs over which she tripped the second time around. Ms. Powers credibly testified that she complained about the dogs (Tr. 24-25) in the past, which is corroborated by the employer's admission of the same. However, the fact

that she had yet another accident is probative that her complaints were unheeded.

Although the employer argues that she was uncommunicative for the most part after June 10th, Ms. Powers testified that she provided the employer with the accident report that was requested. The employer's admission that she, in essence, refused to leave her paycheck because Ms. Powers wouldn't come to the door further exacerbated the claimant's frustration. All these factors contributed to what was a detrimental and intolerable working condition both in and out of the workplace, all of which were within the employer's control. For this reason, we conclude that the claimant should be qualified to receive unemployment compensation.

DECISION:

The administrative law judge's decision dated October 1, 2008 is **REVERSED**. The claimant voluntarily quit with good cause attributable to the employer. Accordingly, she is allowed benefits provided she is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/fnv

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**.

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

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv