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

JUAN CARDENAS CHAVEZ	:	
	:	HEARING NUMBER: 08B-UI-07677
Claimant,	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
D & H POULTRY SERVICES INC	:	
Employer.		

N O T I C E

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

D E C I S I O N

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, Juan Cardenas Chavez, worked for D & H Poultry Services, Inc. February (May) 2007 through July 2, 2008 as a full-time assistant foreman/driver. (Tr. 7, 26) The employer's business involves "... [traveling] around to inoculate chickens in... large chicken production factories... [servicing] all parts of the chicken business." (Tr. 11) The claimant, who spoke limited English (Tr. 13), was the truck chauffeur and responsible for a crew of 12-14 people. (Tr. 8, 11)

On July 2, 2008 (Wednesday), the employer (Tom Dagel, the president) had an abundance of crewmembers on duty whereas the employer was also experiencing a slowdown in work. The trailers were coming in very slowly, causing the two crews to take turns unloading trailers as they arrived about

one hour at a time. (Tr. 27-28) Mr. Chavez, his crew and Mr. Dagel were getting impatient and upset at

the situation. (Tr. 8-9, 15-16, 28) The claimant and his crew members were paid according to how many trucks of chickens they unloaded. (Tr. 12, 13) Mr. Chavez expected to unload eight trucks that day. (Tr. 27) The employer became frustrated and started shouting and cussing at everyone. (Tr.28, 35) Mr. Dagel considered letting one of the two crews that were working to go home when Mr. Chavez told the employer that he and his men were leaving. (Tr. 9, 15) The employer, however, had intended to let the other crew go, and had already told Sonia, another driver, to relieve the other crew. (Tr. 15, 17, 22, 24)

The employer didn't like the claimant telling the employer what he preferred to do, and not waiting until the employer could come up with an alternative plan. (Tr. 13, 15, 17) He angrily told the claimant and his crew if they went home, "… you're done" (Tr. 9, 17, 28, 31, 32). Mr. Dagel had never done this before. (Tr. 10) Mr. Chavez had, in the past, taken time off (two weeks) to tend to family affairs which left the employer in a bind. (Tr. 10, 42) The employer had never warned him that his job was in jeopardy for these brief leaves of absence. (Tr. 10) The claimant and his crew went to the office to retrieve their checks, but they were the only crew members who didn't get paid; they were told to return the following day, but again they didn't receive their checks. (Tr. 29) The claimant was not scheduled to work that Friday, July 4th. (Tr. 14)

He finally got his check on Sunday from his supervisor's wife. (Tr. 29, 45) He learned that on Saturday, July 5th, the employer met and rehired the foreman and most of the claimant's crew. (Tr. 9, 17-18, 20, 36, 41-42, 45) The employer had already hired a new driver. (Tr.) Mr. Chavez was the only person in his group who was not contacted or rehired. (Tr. 30, 43, 47) He believed that he and his crew were fired on July 2nd. (Tr. 34) On July 17th, the employer attempted to contact the claimant, but ending up leaving a voice message to which the claimant did not return his call. (Tr. 9, 32-33, 40)

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."

The record establishes that the slowdown in work on July 2nd roused the emotions of both the employees and the employer. The claimant was justifiably frustrated knowing that his earnings would be reduced due to the reduction in workload. However, the employer's mounting frustration at having too many employees on duty while there was so little work created an intolerable working condition. Mr. Chavez's decision to leave (and take his crew with him) was justified given there was no work available, and he shouldn't be subjected to such belligerence for working conditions that are clearly beyond his control.

Although Mr. Dagel argues that the claimant failed to give him an opportunity to figure out the workload (Tr. 13, 15-16) prior to walking off, the employer admits that he intended to send the other crew home instead. (Tr. 15, 17, 22, 24) See, 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.
To make matters worse, the claimant was unable to get his pay on the day it was due; and when he went to retrieve it the following day, it was still unavailable causing further frustration. This contributed to the claimant's to quit which was directly attributable to the employer.

In the alternative, this separation could very well be characterized as a discharge given Mr. Dagel's angry directive to the claimant, i.e., "you're done." According to the employer's own testimony, he had never said these words to Mr. Chavez for which the claimant would reasonably believe that Dagel meant what he said. The employer also admitted that he never issued any prior warnings to Chavez such that the latter would have known that his job was in jeopardy. At worst, the claimant's behavior would be considered an isolated instance of poor judgment. See, 871 IAC 24.25(1)"a". Even considering this analysis, the employer has failed to satisfy his burden of proof.

DECISION:

The administrative law judge's decision dated September 25, 2008 is **REVERSED**. The claimant voluntarily quit with good cause attributable to the employer. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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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.

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Monique F. Kuester

AMG/fnv