



AMG/fnv

**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 record establishes that Victor Plastics intended to terminate all its employees as of midnight, April 13<sup>th</sup>, 2008. (Tr. 6, 14) Although applications to work for a new owner were distributed prior to April 13<sup>th</sup> midnight deadline, the claimant did not receive one. It was understood that anyone completing the application would be hired and interviewed over a 90-day probationary period. However, there was no guarantee that all employees would continue to have jobs. The new owner had the choice to determine which employees they would hire. (Tr. 10, lines 30-31)

I find this case analogous to Dico v. Employment Appeal Board, 576 N.W.2d 352 (Iowa 1998) wherein the court held that an offer of work and the claimant's refusal must occur *after* the claimant has applied for unemployment benefits in order to effect a disqualification. See also, 871 IAC 24.28(8). Here, the claimant had not yet separated from her current employment when she refused to work for the new owners. Additionally, based on the terms offered for her continued employment, she would have experienced a change in her contract of hire for which she was justified to quit with good cause attributable to the employer. For this reason, I would allow benefits provided the claimant is otherwise eligible.

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John A. Peno

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 (documents) 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.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester