

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

TOBY J ZIMMERMAN

Claimant,

and

CITY OF DES MOINES

Employer.

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HEARING NUMBER: 10B-UI-01400

**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 DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, 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**.

Monique F. Kuester

Elizabeth L. Seiser

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 claimant received threatening phone calls from a co-worker who threatened to kill him, the claimant's girlfriend and the girlfriend's family. The claimant reported the incident to the employer, stating that he was afraid to work with the co-worker, RN. The claimant requested to work at the employer's other facility, as the claimant had worked at both facilities in the past. After the employer spoke to RN, the employer didn't believe that there was a problem and denied the claimant's request to work at the employer's other facility.

The employer's testimony on why he wouldn't allow the claimant to work in the other facility is conflicting. Initially, the employer testified that the claimant was the only trained person to work at the Four-Mile location. (Tr. 12, lines 3-20) Later, the employer agreed that the claimant could have worked at Brooks or Four-Mile. (Tr. 15, 12-18)

RN did not testify at the hearing. The employer agrees that he was not qualified to determine whether or not a threatening call was made. (Tr. 11, lines 15-16) The claimant was the only person at the hearing that was party to the threatening calls. The claimant's request was reasonable in view of the death threats made 1-2 days prior. The record establishes that the employer was capable of granting the request and separating the claimant and RN. Forcing the claimant to work with RN created detrimental and intolerable working conditions for the claimant. The claimant's decision to quit was justifiable. The court in Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005) 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. Based on the foregoing, I would conclude that benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno

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**.

John A. Peno

Monique F. Kuester

AMG/fnv

Elizabeth L. Seiser