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

ANA FLORES DE LA PAZ	:	
	:	**HEARING NUMBER:** 21B-UI-06968
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
TYSON FRESH MEATS 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 96.5-2

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. 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 Board adopts the Administrative Law Judge's findings as its own. The Board adds that had the Claimant not settled the case and quit she would, in a short period of time, have become unable to continue working for the Employer because of her injury.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) 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.

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee 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.

There is no doubt that the Claimant quit. The question is whether it was voluntary and whether it was for good cause attributable to the Employment. On the issue of voluntariness, no one is arguing that the Claimant was coerced into settlement. She is, after all, keeping the money. The mere fact that a freely negotiated agreement had a term of quitting does not make that quit involuntary. We thus turn to whether it was attributable to the employment.

What the unemployment law is concerned about is this: To what can we attribute the current period of unemployment? One must keep in mind that even a person who is not separated from employment will be considered unemployed if they are not performing services and not paid in a given week. So there are two *relevant* situations for a claimant who enters into a Worker's Compensation settlement. Either the Claimant will be able to stay on the job and earn their regular wage if they don't settle, or the Claimant will not be able to stay on the job and earn their regular wage if they don't settle. In this particular context regular wage means a wage sufficient to exceed the earnings cap for unemployment benefits.

A claimant who cannot stay on the job if they settle, or who will be earning sufficiently reduced wage as to be partially unemployed, would face a choice of settle and be unemployed or don't settle but still be unemployed. Either way the result of unemployment follows. So the relevant period of unemployment is not really caused by the settlement.

On the other hand, a claimant who has the option of staying at work faces the choice of don't settle and stay employed, or settle and become unemployed. Here the settlement brings with it the period of unemployment. Thus the courts in such cases look to whether a buyout or settlement was in the context of ongoing or imminent unemployment.

The citation by the Administrative Law Judge is consistent with the law and purpose of the Employment Security Law. *See Edward v. Sentinel Management Co.*, 611 N.W.2d 366 (Minn. App. 2000); *Larson v. Michigan Employment Sec. Com'n.,* 140 N.W.2d 777 (Michigan App. 1966) (benefits allowed to worker who could not perform former duties and who faced remaining employed with no income or resigning in order to receive income); *Brady v. Board of Review,* 704 A. 2d 547 (N.J. Sup. 1997)(setting out two part test and citing cases and explaining benefits are generally only allowed when there are objective facts supporting conclusion that if the resignation had not taken place layoff was imminent); *Childress v. Muzzle*, 663 SE 2d 583 (W. Va. 2008)(adopting *Brady* two part test); *Renda v. Unemployment Comp. Bd. of Review,* 837 A. 2d 685 (Pa. Cmwlth 2003); *Uniroyal Goodrich Tire v. Employment Sec.*, 913 P. 2d 1377 (Okla. App. 1996); *Sievers v. Unemployment Comp. Bd. of Review,* 124 Pa.Cmwlth. 52, 555 A.2d

260, aff'd per curiam, 520 Pa. 83, 551 A.2d 1057 (1987); *York v. Review Bd. of Ind. Employment Sec.*, 425 NE 2d 707 (Ind. App. 1981); *Kentucky Unemploy. Ins. Com'n v. Kroehler Mfg. Co*., 352 SW 2d 212 (Ky App. 1961); *Read v. Employment Sec. Dep't*, 62 Wash.App. 227, 813 P.2d 1262 (1991); *Robinson v. Department of Employment Sec.*, 827 P. 2d 250 (Utah App. 1992); *see also McArthur v. Borman's Inc*., 200 Mich. App. 686, 505 N.W.2d 32 (1993)(accepting buyout rather than new union contract is disqualifying quit); *St. Joseph Health Ctr. v. Missouri Labor and Indus. Relations Comm'n*, 768 S.W.2d 123 (Mo.App.1988) (accepting lump sum when worried about layoffs still disqualifying quit).

Thus in *Larson v. Michigan Employment Sec. Com'n* , 140 N.W.2d 777 (Michigan App. 1966), the Michigan court allowed benefits to a severely injured worker who could not perform his former duties and for whom the alternatives were remaining employed with no income or resigning in order to receive income. *Larson* applies when the claimant has "one tenable alternative," but not when staying on the job while litigating the Worker's Compensation case is also a tenable alternative. In the latter case a claimant may indeed have very good reasons for voluntarily agreeing to settle the Worker's Compensation case, but everyone with a dispute with their employer has reasons they settle and the **Employment Security Law is not in place as a settlement supplement law**.

The critical factual issue is thus whether the Claimant had the option of staying on the job and receiving a sufficient wage to remain employed or whether she was facing unemployment one way or the other.

This case is on the cusp in the sense that the Claimant was able to do her job, but just barely. We find that Claimant has proven that she would have to quit soon because the strain was so great. Under these circumstances the work-related injury itself, and not just the desire to bring the Worker's Compensation dispute to a close, was an important causal factor in the decision to settle/quit. We find that a *Larson* analysis governs this case, and we allow benefits on the ground that the Claimant's work-related injury was a necessary and proximate cause of her ensuing unemployment. Benefits are allowed.

DECISION:

The administrative law judge's decision dated May 26, 2021 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits **provided** the Claimant is otherwise eligible.

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James M. Strohman

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Ashley R. Koopmans

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RRA/fnv Myron R. Linn