

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

RYAN D DANIELS

Claimant,

and

TEMPS NOW HEARTLAND LLC

Employer.

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HEARING NUMBER: 10B-UI-07640

**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. I would find that the claimant quit as a result of another employee's threat to 'kick his -ss.' The employer denied that the claimant ever said complained about this matter. However the record reveals that the claimant's wife had problems with this employee for which the employer admitted the wife's complaints as well as the employer took action to alleviate the problem. The wife's testimony corroborates that the claimant testimony about this employee, which bolster's the claimant's credibility about the hostile workplace. The wife finally quit, as did the claimant who saw no end to the harassment when the employee got in her face again. 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.

John A. Peno

AMG/fnv