

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

GARY BROWN

Claimant,

and

VAUGHN DELOSS CONSTRUCTION

Employer.

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HEARING NUMBER: 12B-UI-09846

**EMPLOYMENT APPEAL BOARD
DECISION**

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, 96.3-7

D E C I S I O N

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

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant gave the Employer a letter requesting a pay raise, which I found not unreasonable. The Employer told the Claimant that it was time 'to part ways' after reading the letter. The Employer, subsequently, met with the Claimant and retrieved the Claimant's work keys, which I would find demonstrated the Employer's intention to sever their employment relationship. See, 871 IAC 24.1(113)" c." The Claimant was then terminated as a result of the Employer's reading the Claimant's letter.

As for the administrative law judge's conclusion that the Claimant voluntarily quit, there is nothing in this record to corroborate that that was the Claimant's intention. "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885, 887 (Iowa App. 1990), accord Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992). The Claimant actually stated that he enjoyed working for the Employer. The letter was merely a basis for negotiation with the Employer for a pay increase.

I would find that the Employer initiated the separation, which by definition is a discharge for which misconduct must be established. The Employer failed to satisfy his burden of proof in that regard. For this reason, I would allow benefits provided the Claimant is otherwise eligible.

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 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.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv