

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 claimant testified that the employer asked the claimant to short-cut and indicate 'not applicable' on the due diligence check list when the employer was in negotiations to sell his business. The claimant walked away from a \$25,000 severance and \$15,000 bonus package (claimant's salary was \$114,000/year) because of what he perceived to be an ethics violation. (Tr. 15) In addition, the employer's testimony was not forthcoming with regard to the Jose Jimenez situation, which I find questionable.

I would also find the claimant's testimony more credible and that the claimant believed he was being asked to falsify records. The court in O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993) held that the claimant need not prove that the employer's actions that triggered the quit were, in fact, illegal. Rather, the court used the reasonable person standard, which indicates if a reasonable person would believe the employer's actions were illegal, then there is good cause to quit. Based on this record, I would conclude that the claimant's quit was with good cause and benefits should be allowed.

John A. Peno

AMG/fnv