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

SUSAN J PETTRONE	:	
	:	**HEARING NUMBER:** 10B-UI-02363
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
SLECTA COMMUNICATIONS/THE KALONA NEWS	:	

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

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring and 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**.

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John A. Peno

AMG/ss

CONCURRING OPINION OF ELIZABETH L. SEISER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would comment that the record establishes that the demeaning and derogatory remarks directed at the claimant came from the two co-workers, and not from the editor.

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Elizabeth L. Seiser

AMG/ss

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board by reversing the administrative law judge's decision as to the separation issue. The claimant clearly exhibited her inability to function in a fast-paced, high stress, deadline-driven work environment. Her own witness testified that the claimant's medical anxiety and panic disorder condition existed prior to her employment with the newspaper. It is unclear if this condition was discussed at the time of hire or at any time during her brief tenure with the employer. (Tr. 5, lines 8-13) This same claimant's witness who was deemed her "ADA advocate" was never actually in the claimant's work environment. She, in fact, testified that she was "a thousand miles away." (Tr. 8, line 10) Thus, I would find her credibility as to the actual working environment to be very limited.

I am unconvinced that the employer was aware of the extent the claimant suffered from her various illnesses, primarily the medical anxiety and panic disorder. Therefore, it would be difficult for the employer to provide any accommodations for the claimant. It is my view that the ongoing issues with the two co-workers who are alleged to have harassed the claimant, do not rise to the level of intolerable or detrimental working conditions under 871 IAC 24.26(4).

Based on the testimony and evidence provided at hearing, I would find the definition of intolerable to be a subjective term in this instance. Perhaps the office environment was difficult for the claimant considering her condition; however, since she was allowed to work from home and worked the bulk of her time away for the offending co-workers and her interaction with them was limited, I do not see how one could conclude that the situation rose to the level of detrimental working conditions such that could be attributed to the employer.

It cannot be denied that the claimant clearly has significant physical and emotional issues and it may be questionable as to if she is, in fact, able to co-exist in any work environment. The undeniable facts from my standpoint show that the claimant has the burden of proof, which she did not meet. Therefore I do not agree that the claimant's quit is attributable to the employer, as it is not clear if it was the alleged harassment, the reduction in hours, the advice of her general practitioners and her chiropractor, the workload or the claimant's pre-existing conditions that caused the claimant to feel compelled to quit.

The claimant's multiple issues, including but not limited to her emotional and physical wellbeing, are unfortunate. But, to charge the employer for the claimant's personal fragilities would be equally as unfortunate. For all the above, I would conclude that the claimant's quit was not attributable to the employer, and benefits should be denied.

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Monique F. Kuester

AMG/ss

The employer submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence (documents) were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

AMG/ss