

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 quit due to what she perceived was a hostile work environment. She put the Employer on notice that if her supervisor, Kathy Faust, did not quit yelling at her, she would quit, which the Employer refutes. Ms. Faust yelled at her in the presence of employees and customers. Such typical ongoing behavior caused the Claimant to experience health problems; however, the Claimant provided no corroborating medical documentation. The Claimant's witness testified that several employees were aware of the problems between Faust and the Claimant. Faust was oftentimes upset because of the Claimant's health issues, which Faust sometimes spoke about with other employees. Substantial evidence supports that Faust regularly intimidated the Claimant both at work and while on the phone. It is no wonder the Claimant walked off the job without any notice in light of having to work under such intolerable conditions. The court Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005) 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. Based on this record, I would conclude that the Claimant satisfied her burden of proving her quit was with good cause attributable to the Employer. Benefits should be allowed 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.

Lastly, the Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

John A. Peno

Monique F. Kuester

AMG/fnv

Cloyd (Robby) Robinson