

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

JAMES F BRUMMOND

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 11B-UI-11170

**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 remand the decision of the administrative law judge for further consideration. At the time the Claimant quit he was working part-time. Under the rules of the Department “[a]n individual who voluntarily quits without good cause part-time employment ... [who] is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, **shall not be disqualified for voluntarily quitting the part-time employment.**” 871 IAC 24.27(1)(emphasis added). This rule, in my estimation, only applies where the claimant has base period wages from full-time employment. If a claimant is a “part-time worker,” then quitting part-time work without good cause would be disqualifying. But where the claimant has regular full-time work in his base period, then rule 24.27(1) applies and quitting part-time work is not disqualifying. See *Welch v. IDJS*, 421 N.W.2d 150 (Iowa App. 1998); *McCarthy v. Iowa Employment Sec. Commission*, 76 N.W.2d 201, 247 Iowa 760 (Iowa 1956). I note that in such cases the rule provides that “benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account...” The record here does not show whether this Claimant was a part-time worker throughout his base period. I would for that reason remand for testimony of the hours worked by the Claimant during his base period employment.

John A. Peno

AMG/kk