

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

LORI I BAKKEN

Claimant,

and

NORDIC EXPRESS INC

Employer.

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HEARING NUMBER: 14B-UI-05246

**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, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. With the following modification, the majority members of the Appeal Board find 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 with the following modifications. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION:**

The Employment Appeal Board would make the following modification to the administrative law judge's reasoning and conclusions of law.

Insert after the first paragraph of the *Reasoning And Conclusions Of Law* the following:

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. Iowa Code §96.6(2). Here all agree the Claimant quit. Once a quit is established the *statute* places the burden of proving good cause on the Claimant. Iowa Code §96.6(2) (“claimant... has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer”). This express allocation to the claimant of the burden of proving good cause was added to the Code in 1998. 77 G.A. ch. 1158 (approved May 5, 1998). Cases reviewing agency decisions predating that

amendment are, of course, not relevant on the issue of whether the Claimant has the burden of proving good cause. Clearly, under the plain language of the Code the Claimant is the one with the burden of proving good cause for her quit.

The third sentence of the final paragraph of page 2 of the Administrative Law Judge's decision is struck, and in lieu of it the Board inserts:

The credible evidence fails to establish that the alleged incidents of harassment that were sexual in nature, including the unwanted touching, took place.

Insert before the second to the last paragraph of the *Reasoning And Conclusions Of Law* the following:

Even viewing the case as one where the Claimant quit over work-related health conditions does not help the Claimant. When quitting for work-related health concerns an employee is required to take the reasonable step of informing the employer about the conditions causing the health problems *and* that she intends to quit employment unless the conditions are corrected. *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993); 871 IAC 24.26(6)(b). Here the Claimant did not notify the Employer of the existence of the claimed work-related health problem *prior* to her quit, much less did the Claimant tell the Employer she was going to quit if the problem was not corrected. The Claimant simply did not “before quitting ... infor[m] the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated.” 871 IAC 24.26(6)(b). This alone would prevent the Claimant from collecting benefits under a work-related health quit theory.

Kim D. Schmett

Ashley R. Koopmans

RRA/fnv