

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

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**ELIZABETH LOZANO**

Claimant,

and

**TRI J INC**

Employer.

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**HEARING NUMBER: 14B-UI-04751**

**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 ALLOWED IF OTHERWISE ELIGIBLE**

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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**.

The majority would cite in support of the decision in this case of *Dico, Inc., v. Iowa Employment Appeal Board*, 576 N.W.2d 352 (Iowa 1998). In *Dico*:

[The] company unveiled its plan to close its Des Moines manufacturing facility on July 25, 1995. Pursuant to a plant-closing agreement negotiated with the claimants' union, Dico announced that jobs would be made available for each Dico worker at Titan Tire. Titan Tire was owned by Dico's parent company and also had a plant located in Des Moines. Dico posted various Titan positions at the Dico plant and gave Dico workers until July 25, 1995 to bid on a job. The Dico plant eventually closed on July 28, 1995, and the claimants' employment relationship with Dico ended on that date. Although many Dico employees accepted jobs with Titan, the claimants did not. Instead, the claimants filed for unemployment benefits in early August 1995.

*Dico* at 353-54. The agency allowed benefits under rule 24.24(8) which provided then, and which is still in effect and still provides, that “[b]oth the offer of work or the order to apply for work and the claimant’s accompanying refusal must occur within the individual’s benefit year, as defined in subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed.” 871 IAC 24.24(8). *Dico* upheld challenge to the validity of the rule, and applying the rule upheld the allowance of benefits. The facts here are not meaningfully distinguished from *Dico* and so we cannot find a refusal of suitable work. As for a disqualifying quit or discharge, it is clear that the Claimant stopped working for the *seller* because the seller stopped owning the business, that is, because of a lay off from the employ of the seller. It is even more clear that the Claimant never worked for the buyer, and thus cannot have quit the buyer – you cannot quit working somewhere you never worked. There being no quit at all we cannot disqualify based on a quit, and *Dico* prohibits a disqualification based on a refusal of work occurring before the benefit year.

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Cloyd (Robby) Robinson

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Ashley R. Koopmans

**DISSENTING OPINION OF KIM D. SCHMETT:**

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. In particular I would regard the failure to take up the purchaser on guaranteed employment to be a quit.

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Kim D. Schmett

RRA/fnv