

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

SARAH B WYNN

Claimant

and

AMERICAN ORDNANCE LLC

Employer

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HEARING NUMBER: 19BUI-07254

**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, 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Administrative Law Judge's findings of fact are adopted by the Board as its own.

REASONING AND CONCLUSIONS OF LAW:

We think the particular facts of this case are governed by the regulations concerning terminations of employment during a trial period of employment. Those rules state that a quit *without notice* during a trial period of employment is not disqualifying, 871 IAC 24.25(12), and that a dismissal during such a trial period, based on inability to do the job, is likewise not disqualifying. 871 IAC 24.32(5). In this case prior to her hire the Claimant notified the Employer that she was concerned her wrist injury had the potential to affect her ability to do the job. As a result,

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each party had a physician examine the Claimant and it was determined she likely could do the job. Turns out, after about a week on the job, the Claimant had to notify the Employer that she could not perform the duties of the job, and that she would like to keep working if they could find another one. The Employer did not, and the separation occurred as a result of the good faith actions of both parties. We think there was at least an implicit trial period in this case. The law's purpose in allowing a trial period is to encourage an unemployed worker who has a question whether she can do an offered job to at least give it a try. This way if the worker can do the job no claim is ever filed, and if she ends up having to leave during the trial period then the worker isn't punished for trying to work. Given the questions each party had about the Claimant's abilities at the start of the employment, we think a week certainly qualifies under any understanding of "trial period." Thus, if we call the separation a quit, it was not disqualifying because it was *with* notice, and if we call it a dismissal, it was clearly not for misconduct. 871 IAC 24.25(12); 871 IAC 24.32(5). Under these particular circumstances, the Claimant is not disqualified for her good faith attempt, and failure, to perform the work that was offered to her.

Although it does not affect our decision, we note that since all the Claimant's wages paid by the Employer were paid in the third quarter of 2019, and she did not file for benefits until that quarter, then the Employer cannot be chargeable on this claim.

DECISION:

The administrative law judge's decision dated October 1, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

We note the Employer is not a base period employer and will not be chargeable on this claim.

Ashley R. Koopmans

James M. Strohmman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board. While I am sympathetic to the Claimant's plight, this does not change the legal analysis. I would affirm the decision of the administrative law judge in its entirety.

RRA/fnv