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

TAYLOR P MONTHEI	:	
	:	**HEARING NUMBER:** 11B-UI-17388
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
FAREWAY STORES INC	:	
Employer.		

N O T I C E

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: 96.5-2-A, 871 IAC

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The employer 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 Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Taylor P. Monthei, was employed by Fareway Stores, Inc., initially, from August 10, 2006 at the Creston Store (Tr. 9) until sometime couple of months prior to her being rehired by the Clear Lake Fareway beginning September 6, 2010 through September 25, 2010 a part-time checker. (Tr. 2, 9) Every Thursday or Friday, the employer posted the following week's schedule. (Tr. 9)

Ms. Monthei last worked and picked up her last paycheck on September 25, 2010. (Tr. 5, 6, 7, 9-10, 15-16) She was also scheduled to work September 25-27th (Tr. 10, 14); however, she contacted the assistant manager, Angie, to request time off due to circumstances involving her sick father and for homecoming weekend, which she was granted. (Tr. 8, 10-11, 14) On September 28th, Ms. Monthei called in to get her schedule for the following week and was told by some male that her name was removed from the schedule. (Tr. 7, 10, 12) The claimant did not contact the manager or the assistant manager, and did not know who she spoke to at that time. (Tr. 7-8, 16)

Ms. Monthei did not contact the employer at the beginning of October, or any other time to request what the following week's schedule was so that she would know that she was scheduled to work October 21, 23, and 26th. (Tr. 6, 7, 16) The employer naturally assumed she had quit.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2009) provides:

> An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

> *Voluntary quit without good cause*. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5…

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The claimant was a 4-year employee of the Fareway Stores who was, admittedly, aware that the assistant manager and manager were in charge of the store. (Tr. 12) And even though she had only been employed with the Clear Lake for a short period of time, her continued understanding of this authority is exemplified when she spoke to Angie, the assistant manager, to request time off for September 25-27th for personal reasons. Her subsequent reliance on some unknown, unnamed male employee that she wasn't on the schedule and concluded therefore, that she had been discharged, was simply not reasonable, nor credible.

First off, the employer provided unrefuted testimony that the schedule was posted weekly for the following week. (Tr. 9) So even if someone told her she was no longer on the schedule, we can infer she wasn't on the schedule for that particular week, or the week following. For Ms. Monthei to allow several weeks to go by without so much as an inquiry to obtain clarification of her status leads us to conclude that she intended to quit. The court in , LaGrange v. Iowa Dept. of Job Service, (Unpublished, Iowa App. 1984) held that a claimant's belief that he was terminated without further inquiry is the equivalent of a voluntary quit without good cause attributable to the employer.

DECISION:

The administrative law judge's decision dated January 26, 2011 is **REVERSED**. The claimant was discharged for disqualifying misconduct. Accordingly, she is denied until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

_____
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 affirm the decision of the administrative law judge in its entirety.

_____
John A. Peno

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 Rule of two affirmances. IAC 23.43(3)

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.
(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
(3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

_____
John A. Peno

_____
Elizabeth L. Seiser

_____
Monique F. Kuester

AMGkk