

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

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**TAMMY L KOERTING**

Claimant,

and

**NISSEN INC**

Employer.

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**HEARING NUMBER: 11B-UI-00864**

**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 employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The claimant, Tammy L. Koerting, worked for Nissen Inc., d/b/a Taco John's, (Tr. 3) from March 2008 through September 13, 2010 as a cashier. (Tr. 3, 6, 9) The claimant carpooled to work with a co-worker for a 16-mile commute from her home in Estherville to Spirit Lake, where Taco John's was located. (Tr. 4-5, 7)

Several times, Ms. Koerting reported to work upset over personal issues she was having with her husband, to which she confided in Wanda Garloff, the General Manager, who was also like a mother-figure to her. (Tr. 6, 8-9) On September 13, 2010, the claimant reported to work and called Ms. Garloff, who was working at another business location she owned, and informed her that she had to quit due to health

reasons. When Ms. Garloff questioned her further about her reasoning, the claimant responded that "...unless you want me to stand there and have heart palpitations all day... [her] doctor [said] she shouldn't work..." (Tr. 4, 5, 6-7, 8) Ms. Koerting had sought medical attention for stress, i.e., chest pains, but she never told the employer she was having health problems because of her job; nor did she ever present any medical documentation to inform the employer about her health concerns. (Tr. 4, 7) The claimant's husband, who was waiting in the parking lot, picked her up and took her home.

## 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).

Although Ms. Koerting argues that she quit her job because of stress, specifically, work-related stress, there is nothing in the record to substantiate her allegation. The only evidence she provides is that of testimony, which the employer denies having any knowledge, and also a doctor's note that is dated three days *after* her quit. (Claimant's Exhibit 1) Even this documentation falls way short of being "...competent evidence showing adequate health reasons to justify termination..." See, 871 IAC 24.26(6)"b."

Ms. Koerting's testimony about the reasons she quit are simply not credible. She failed to provide the doctor's note she allegedly received the day she quit, which allegedly advised her to quit. (Tr. 4-5) The absence of such documentation is also corroborated by the employer's testimony that she never received it. (Tr. 7) Additionally, the employer provided credible testimony that Ms. Koerting experienced personal problems, presumably which may have played a role in her decision to quit. Again, the claimant failed to substantiate her allegation that she quit due to health reasons, whether because of work or personal problems. Lastly, the court in *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993), established three elements that are required for a quit to be found with good cause attributable to the employer:

- 1) Claimant must notify the employer of the work-related health condition;
- 2) Claimant must inform the employer the claimant will quit if reasonable accommodation not provided;

- 3) And Claimant must give the employer reasonable amount of time to provide reasonable accommodation.

If any or all of these elements are missing, the quit is *without* good cause. Here, Ms. Koerting admitted only telling the employer of her alleged work-related health problem on the day she quit. She failed to allow the employer reasonable notice, much less any reasonable amount of time to accommodate her concerns before she took final action to quit. Based on this record, we conclude that the claimant failed to satisfy her burden of proof.

**DECISION:**

The administrative law judge's decision dated April 21, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant voluntarily quit her employment without good cause attributable to the employer. Accordingly, she is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g".

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

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