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

ANGELA GROVER-FAUST	:	
	:	HEARING NUMBER: 09B-UI-03784
Claimant,	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
TARGET CORPORATION	:	
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: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERIWSE 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:

Angela Grover-Faust (Claimant) was hired by Target Corp. (Employer) as a full-time seasonal worker on October 28, 2008. (Tran at p. 2). At the time of her hire the Claimant was told she was to work through the holidays. (Tran at p. 3; p. 5; p. 6; p. 7; p. 11; p. 13). The contract of hire was to terminate after the holidays. (Tran at p. 3-4; p. 5; p. 7-8). The Claimant at that time would have had the option to seek employment with the Employer on a permanent basis. (Tran at p. 3-4; p. 8; p. 13; p. 15-16). There was, however, no guarantee of permanent work. (Tran at p. 3-4; p. 8; p. 9; p. 13). In mid-December the Claimant was told by her co-workers that even seasonal workers are to give notice that they will not be seeking permanent employment. (Tran at p. 4; p. 8). The Claimant thought this was odd but, in any event, gave her two week notice intending to actually cease work after the holidays

as she was told at the

time of hire. (Tran at p. 4; p. 5). The Claimant was on the schedule for the final week of December 27 through January 2 but was not given any hours. (Tran at p. 4; p. 5). The last day the Claimant performed services for the Employer was December 23, 2008. (Tran at p. 2; p. 4).

REASONING AND CONCLUSIONS OF LAW:

The rules of Iowa Workforce Development provide:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> …
>
> 24.26(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

871 IAC 24.26.

As understood by the Claimant she was hired only to work through the holidays. The Claimant then, apparently misinformed about the practice, gave her two weeks notice. We find credible the Claimant's testimony that when she gave the notice she expected to keep working during the notice period. The Claimant acknowledges that it is odd to give notice when the contract was ending on its own terms but explains that her co-workers told her this was the practice even when she questioned if it was necessary for seasonal workers. This is credible to us. As a result we have ruled that the Claimant was hired to work the holiday season and that in mid-December she gave notice of her intent to resign in two weeks. This means the Claimant intended to finish out her seasonal contract of hire. She decided to forgo only the *possibility* that she might be hired permanently. Failing to apply for work, prior to seeking benefits at least, is not disqualifying. The Claimant worked the term of her contract and thus the separation resulted from the expiration of the contract and not a quit by the Claimant. We emphasize that the Claimant is not being awarded benefits for any time prior to January 18, her original claim date. Thus under our order she is only getting benefits for the period after when her contract of hire would have terminated on its own terms.

In addition we note that even if we were to believe the Employer that the Claimant was hired to work ninety days that period would have been up on January 26, 2009. The Claimant filed for benefits on January 18, 2009. Thus even treating the Claimant as having quit, and even using the 90-day limitation urged by the Employer, the contract would have expired the week after the Claimant filed her claim for benefits. Under the rules, where a claimant quits prior to the scheduled end of employment, benefits are denied between the quit and the scheduled end but allowed after that. 871 IAC 24.23(33). Thus even

accepting the Employer's timeline the Claimant would only be denied benefits until January 26 – that is, she would lose only one week of benefits. Because of our ruling in favor of the Claimant's understanding of the contract we do not deny even this one week, but we do note that even accepting the Employer's arguments the most that is at stake is a week of benefits.

DECISION:

The administrative law judge's decision dated April 6, 2009 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. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside.

_____
John A. Peno

_____
Elizabeth L. Seiser

AMG/ss

DISSENTING OPINION OF MONIQUE KUESTER:

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.

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Monique Kuester

AMG/ss

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (documents) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Elizabeth L. Seiser

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Monique Kuester

AMG/ss