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

DEE A WILSON	:	
	:	**HEARING NUMBER:** 10B-UI-11945
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
WESTERN HOME COMMUNITIES 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: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Elizabeth L. Seiser would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 871 3.3(3).

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Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I would find the reduction in time allotment (from 60 to 30 minutes per room) given to the claimant to each room was a substantial change in her contract of hire. Additionally, the claimant experienced pressure and harassment when she was unable to complete each room within the newly allotted time frame. The employer admitted the time allotment change, but was evasive as to when the change occurred. (Tr. 11, lines 28-32) The claimant provided credible testimony that employees were ***not*** told the change was only temporary. The 50% time allotment reduction created an intolerable working condition for the claimant was justified in quitting. And, according to the court in Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), the notice of intention to quit set forth in Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993) does not apply to quits involving detrimental and intolerable working conditions. The Hy-Vee case also overturned Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa App. 1996) involving quits due to unsafe working conditions. For this reason, I would conclude that the claimant voluntarily quit with good cause attributable to the employer. Benefits should be allowed provided she is otherwise eligible.

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John A. Peno

AMG/fnv