

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. The Claimant justifiably quit due to what I consider to be a change in his contract of hire, which caused a loss of income. The Claimant initially earned \$14/hour with 10% sales bonus. These figures changed when the Employer changed his salary and included a rolling bonus between 3-20%. The Employer stipulated that if the Claimant failed to meet the June 30th deadline, the bonus percentage would be reduced by half.

Although the Employer argued that the Claimant could potentially earn more annual income, and predicted that the Claimant would experience 30% increase in sales. It was the Claimant's past experience that he rarely met the June 30th deadline. Instead, his experience was that he didn't talk to customers between April 15th and the month of August.

The Employer is, essentially, asking the Claimant to 'roll the dice' on the new bonus plan. Under the old plan, he received 10% on all sales without a deadline penalty. Under this new plan, he could experience a substantial reduction in remuneration. For these reasons, I would conclude that his quit was with good cause attributable to the Employer. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

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 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.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson