

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

RHONDA TUCKER-THOMAS

Claimant,

and

MENARD INC

Employer.

:
:
:
:
:
:
:
:

HEARING NUMBER: 13B-UI-09945

**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 Claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law by citing the following case law as supporting authority:

In *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993), the Court 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.

We would comment that even if the Claimant informed the Employer about her restrictions, she must, first, inform the Employer that she would quit if the Employer failed to rectify her concerns about having to work outside those restrictions prior to her actual quit.

Monique F. Kuester

Cloyd (Robby) Robinson

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 Employer testified that he allegedly believed the Claimant was on a medical leave of absence, and indicated that the job was still open. The Claimant, however, provided credible testimony that she informed the Employer of her medical restrictions on October 9, 2013 prior to her separation, which is corroborated by the fact that the Employer's attorney had knowledge of the same. Yet, Mr. Krysl continued to schedule her for work outside her restrictions by telling her she needed to work her days off to obtain 40 hours. She was also directed to schedule her therapy during non-work hours. She complained to her supervisor in June, July and the early part of August 1st about being forced to work beyond her restrictions.

Mr. Krysl's testimony that he had no knowledge of her restrictions strains credibility. The fact that the Employer, in essence, forced her to work beyond what the company doctor prescribed as restrictions created a detrimental and intolerable working condition for which she had good cause to quit when she left for physical therapy and chose not to return. She needn't have to provide notice of her intention to quit under that circumstance. For this reason, I would allow benefits provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv