

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

MILTON A SCHULTE

Claimant,

and

IOWA BEER & BEVERAGE COMPANY

Employer.

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HEARING NUMBER: 09B-UI-10143

EMPLOYMENT APPEAL BOARD
DECISION

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. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. 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**.

Elizabeth L. Seiser

Monique F. Kuester

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 believes that he was harassed at work by a co-worker for which he complained to his supervisor at least three times. The claimant's testimony is corroborated by Mr. Welsh's testimony. (Tr. 8) The co-worker's verbal abuse continued. Any reasonable person would believe that if complaints are taken to an immediate supervisor, action would be taken to remedy the situation. An employer shouldn't have to go up a chain of command to have the harassment stopped. Mr. Welsh admits that the claimant came to him at least three times. Based on this record, I would conclude that the claimant established that he worked under detrimental and intolerable working conditions for which he quit with good cause attributable to the employer. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005) where the court held that 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.

John A. Peno

AMG/ss

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/ss