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

MICHELLE M LUDWIG	:	
	:	**HEARING NUMBER:** 17BUI-13790
Claimant	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
PRAIRIE HILLS AT PENN PLACE OPERA	:	
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, 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE 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 Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Employment Appeal Board would adopt and incorporates as its own the administrative law judge's Findings of Fact with the following modifications:

No other employees were required to bank their PTO hours as was Ms. Ludwig. (29:58-30:42)

In mid-October, a caseworker notified Ms. Ludwig about a Medicaid billing error that needed correction to which the Claimant alerted Mr. Sparks about the matter. (32:07-32:20) Sparks advised the Claimant not to speak with Ms. McGinnis, as he would apprise her of the situation. (32:22-32:28) He preferred Ms. Ludwig never discuss anything with Ms. McGinnis; that she only go through Sparks with any work concerns. (33:05-33:18; 48:04-48:10) Ms. Ludwig wanted him to be sure to reiterate to Ms. McGinnis that the billing error was not her fault, and that she intended to correct it, but the billing would be off until the credit would be used up. (32:29-32:42)

The Claimant later learned that Sparks did not speak to the Employer.

When Mr. McGinnis confronted her about her PTO usage, he was clearly angry and she felt threatened by his overall demeanor towards her. (1:13:42-1:14:11; 1:15:20)

Ms. McGinnis was upset with the Claimant, believing the latter was responsible for the Medicaid billing error. (32:50-33:13; 48:12-48:48) The Claimant believed this prompted the Employer's decision to move her out of her 'fairly large' office and into a smaller one as punishment, which made her work more difficult since she was no longer in close proximity to a computer. (31:35-31:45; 32:00-32:07; 32:45-32:50; 39:42; 48:15-48:19) Mr. Sparks moved into the Claimant's office.

The Claimant usually worked beyond 40 hours weekly, and generally had no concerns regarding flex time or PTO approval prior to December. (26:35-26:47; 46:15-47:11)

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(5) provides a quit is with good cause attributable to the employer when, "The claimant left due to intolerable or detrimental working conditions." The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code §96.6(2) (amended 1998).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The record established that Ms. Ludwig and other co-workers worked under a constant threat that they were replaceable. (Exhibits C & F) This would unnerve any reasonable person under the circumstances and would place undue pressure on the employee to whom such a comment was directed. To make matters worse, the Claimant experienced instances of public humiliation in her co-workers' presence when she was verbally reprimanded for not completing a task and questioned about her truthfulness during a group meeting. The Employer's admitted use of an inappropriate idiom corroborates Ms. Ludwig's testimony about the Employer's overall demeaning and antagonistic behavior towards her. When she complained about the Employer's inappropriate usage of slang towards her to Sparks, he was essentially dismissive. (1:15:09-1:15:33; 2:08:20-2:08:25)

The Claimant also provided documentation to corroborate her testimony about the hostile work environment. (Exhibits C & E) The caustic workplace became so detrimental and intolerable that Ms. Ludwig sought medical attention. (Exhibit D) No employee should have to work under such hostile working conditions. Ms. Ludwig reasonably believed she had no recourse but to quit because her complaints about the work environment were against the owners, who were the highest in the chain of command in the workplace. (1:16:15-1:16:27) She had no reason to believe the Employer would listen, much less alter their behavior, favorably, towards her. The court in Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005) 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. Based on this record, we conclude that the Claimant satisfied

her burden of proof.

DECISION:

The administrative law judge's decision dated January 18, 2017 is **REVERSED**. The Claimant voluntarily quit with good cause attributable to the Employer. Accordingly, she is allowed benefits provided she is otherwise eligible.

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Ashley R. Koopmans

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James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the administrative law judge's decision in its entirety.

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Kim D. Schmett

AMG/fnv