

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

AMANDA LEWIS	:	
	:	
Claimant	:	HEARING NUMBER: 20B-UI-09329
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
COMES INVESTMENTS INC	:	
	:	
Employer	:	

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 Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Amanda Lewis, worked for Comes Investment (Pizza Hut) from May 25, 2019 through June 19, 2020, originally, as a delivery driver, and continuing as a part-time shift lead at the Emmetsburg location. On Thursday, June 18th, 2020, the Claimant contacted the manager to complain about the Employer's hiring of Ariel Webster, who was the sister of Allen Schwidder. The Claimant provided the Employer with a copy of a temporary restraining order she'd taken out on Schwidder, effective July 2020, but it didn't include Ariel's name at the time. The Claimant indicated she was quitting because she was concerned for the safety of herself and her children. She was upset that the Employer was hiring Ariel. The Employer tried to work with the Claimant by indicating that Ariel wasn't scheduled until the 23rd, and that the Employer would make sure the Claimant and Ariel would never be scheduled on the same shift. The Claimant did not accept that, and turned in her keys and shirt on June 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5...

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 record establishes the Claimant chose to sever her employment relationship because the Employer hired the sister of a man on whom she'd taken out a temporary restraining order. The only information brought before the Employer after the time Ms. Webster was hired, was a copy of a temporary restraining order that didn't include Ms. Webster's name on it. The Employer had little reason at the time to withdraw their offer of employment to her, except for the Claimant's voiced complaint. Once the Claimant clarified her concerns on June 19th, the Employer made a good faith effort to mitigate her concern by assuring her she would never work at the same time. We would note the Claimant took no legal action against Ms. Webster until after she quit her employment.

While we sympathize with the Claimant's predicament, there is nothing in this record to establish the Employer created a detrimental or intolerable working condition for the Claimant as a result of hiring Ms. Webster. The Claimant offered no evidence that Ms. Webster had a prior history of harmful behavior towards her that would have justified her abrupt quit. Based on this record, we conclude the Claimant did not satisfy her burden of proof.

DECISION:

The administrative law judge's decision dated September 18, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, she is denied benefits until such time she has worked in and was paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Ashley R. Koopmans

James M. Strohmman