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

JACKIE J TVEDT Claimant, and SWIFT & COMPANY Employer.	:	HEARING NUMBER: 09B-UI-06186 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 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 claimant, Jackie J. Tvedt, worked for Swift & Co. from December 8, 2008 through March 5, 2009 as a full-time production worker. (Tr. 2, 3) On March 4, the company nurse sent her to a doctor because of complaints she had with her left hand. (Tr. 3) Ms. Tvedt had been icing her hands for the past two weeks. (Tr. 4) The doctor diagnosed her as having left hand paresthesia (Tr. 4) and placed

her on medical restrictions, i.e., no twisting, bending or lifting/clenching items weighing more than five pounds with her left hand. (Tr. 3, 5, 6)

When the Ms. Tvedt returned to work, she immediately presented her restrictions to Nora, the line supervisor, who looked at her with disgust. (Tr. 4, 7) The employer returned the claimant to, basically, the same duties that involved lifting 25 pound loins with her other hand, and squeezing for bones, which she found difficult to do. (Tr. 5-6, 8) All along, Nora kept yelling and threatening to fire her due to her restrictions. (Tr. 11) Nora was the highest person in authority except for the plant manager; she had previously admonished Ms. Tvedt not to talk to the plant manager. (Tr. 11) The claimant properly apprised the company nurse of her restrictions. The claimant had also been going to the Human Resources Department every lunch hour for the last couple of weeks complaining of her hand problems. (Tr. 7) Ms. Tvedt believed she could not talk to any one else about her predicament, so she quit.

REASONING AND CONCLUSIONS OF LAW:

The court in Suluki v. Employment Appeal Board, 503 N.W.2d 402 (Iowa 1993) held that an employee who quits due to work-related health problems, which are aggravated by the employment, must notify the employer of the problem and that the employee will quit if the problem is not resolved.

In the instant case, the claimant suffered a work-related injury for which she sought medical attention. The record clearly establishes that the employer knew she had difficulty working with her hands, as it was the company nurse who directed her to go to the doctor. (Tr. 3) Upon her return to the workplace, Ms. Tvedt essentially put the employer on notice, once again, that she had a 'problem' in need of resolution, i.e., medical restrictions. The doctor's note specifying what activities should be avoided brought a look of 'disgust' to Nora's (claimant's immediate supervisor) face, which made the claimant keenly aware that the changes she needed to be made were unwelcome and not forthcoming. The claimant's belief that she was precluded from going 'outside the chain of command' (Tr. 7) was reasonable given her prior experience with Nora regarding her previous hand complaints.

The employer failed to provide Nora as a firsthand witness to refute any of the claimant's testimony. The unrefuted fact that Nora returned the claimant to work far beyond her medical restrictions while continuously berating her is demonstrative of a work environment not only in violation of her restrictions, but clearly detrimental and intolerable to the claimant's overall well-being. We conclude that the claimant has sufficiently satisfied the first prong of the Suluki test as far as putting the employer on notice of her health-related concerns.

Given Nora's hostile and intimidating behavior towards Ms. Tvedt, we find that not only was the claimant in danger of re-injuring herself, but she was being verbally and psychologically 'bullwhipped' to continue potentially harmful movements that were outside her restrictions. Such an environment, whether the claimant was injured or not, was certainly a 'morale-breaker' for even the physically strongest of employees. No one should have to work under such scathing antagonism without recourse. Over time, any employee's acquiescence to such bullying would not only lower morale (negatively affecting production) for the person to whom it is directed, but the company overall, which is definitely not in the best interests of the employer.

Thus, as for the second prong of Suluki (notice of intention to quit), the claimant needn't provide such notice. The facts support that Ms. Tvedt worked in situation that was clearly detrimental and intolerable for her outside of the health aspect. 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. 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. Lastly, 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." For all the foregoing reasons, the Board finds the claimant satisfied her burden of proof that her quit was justified and not a disqualifying event.

DECISION:

The administrative law judge's decision dated May 19, 2009 is **REVERSED**. The claimant voluntarily quit with good cause attributable to the employer. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

AMG/ss

DISSENTING OPINION OF MONIQUE F. KUESTER:

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

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Monique F. Kuester

AMG/ss