

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

LINDA K TRAYWICK

Claimant,

and

BERTCH CABINET MFG INC

Employer.

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HEARING NUMBER: 09B-UI-01019

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(2)a

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The employer 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**.

 John A. Peno

 Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant had a series of unexcused absences (April 16th, May 5th, May 13th, and finally July 17, 2008). I do not believe that the claimant was at the worksite on July 17th based on the evidence (or lack thereof) provided, i.e., no witnesses who saw her on the premises and no record of her clocking in that day. Thus, it was her failure to report to work that caused her termination.

According to the employer, the claimant failed to leave a message about her badge until July 20th. Based on the evidence presented, the claimant was well aware via documentation that she was at the limit of her unexcused absences.

The employer established legitimate business reasons for discharging the claimant. Both sides had inconsistencies in their testimony. Workmans' compensation issues were repeatedly comingled with the unemployment issues that were not relevant to the issues in the hearing. However, the employer clearly documented the claimant's attendance issues, which had nothing to do with her illness or excused absences.

The record also established the employer's diligent efforts to work with the claimant. In the end, the employer satisfied their burden of proof. Substantial evidence supports the claimant's ongoing unexcused attendance record. For this reason, I would conclude that benefits should be denied.

Monique F. Kuester

AMG/fnv