

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

LOREN REED	:	
	:	
Claimant,	:	HEARING NUMBER: 07B-UI-08814
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
IOWA WORKFORCE DEVELOPMENT	:	
	:	
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: 96.3(7)

DECISION

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

Mary Ann Spicer

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 had a serious accident and had foot surgery on September 6, 2007. The claimant received a medical release to return to work with a weight-lifting restriction of no more than 10 pounds, minimized walking or standing and the required use of a CAM walker. When asked if the claimant was able to perform work within these restrictions, the claimant answered "yes". The claimant's job was to ensure that crews got out on jobsites. The claimant's job was to drive the tractor mower, which he was unable to do with a CAM walker. (Tr. 6, lines 20-32) There is no evidence in the record to conclude that the claimant could not perform his duties. For this reason, I would allow benefits from his September 6, 2007 medical release.

John A. Peno