

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

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**WESLEY I HAMAND**

Claimant,

and

**GMT CORPORATION**

Employer.

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**HEARING NUMBER: 13B-UI-12996**

**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 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**.

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Monique F. Kuester

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Cloyd (Robby) Robinson

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Employer terminated the Claimant for leaving a note containing profanity on the machine for the upcoming machine operator (his friend Gabe) to read. The note was intercepted by the lead worker instead. While the Employer agrees that profanity is used in the factory, such usage is forbidden in the presence of customers.

The Claimant wrote the note as a practical joke for his friend, and expected no one else to read it. He certainly intended no harm towards the Employer or anyone for that matter. The Claimant had no prior disciplines against him of this nature. While the Employer may have compelling business reasons to terminate the Claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). At worst, I would consider this to be an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided the Claimant is otherwise eligible.

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John A. Peno

AMG/fnv