

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

ROBERT E JAMES

Claimant,

and

PILOT TRAVEL CENTERS LLC

Employer.

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HEARING NUMBER: 07B-UI-07774

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**.

The Employment Appeal Board would comment that the determination of the claimant's credibility is based solely on the testimony provided in the hearing. The information to which the administrative law judge referred from Iowa Workforce Development Center was not necessary in our arriving at this decision.

Elizabeth L. Seiser

AMG/fnv

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 employer discharged the claimant for allegedly unzipping his pants and shaking his groin at Kevin Herndon when Mr. Herndon asked the claimant to tuck in his shirt. The claimant denies this allegation. The employer had at least two witnesses, yet failed to present them as firsthand witnesses or provide their written statements at the hearing. According to Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976), where, without satisfactory explanation, relevant evidence within control of party whose interests would naturally call for its production is not produced, it may be inferred that evidence would be unfavorable. The burden is on the employer to establish that the claimant committed job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Here, the employer failed to satisfy that burden.

In addition, I would note that the administrative law judge weighed the claimant's honesty based in part, on Iowa Workforce Development Center records that I, too, found unnecessary in determining the claimant's credibility in this matter. Those records were not a part of the record made before the administrative law judge, as neither party raised those documents or the information contained therein at the hearing.

John A. Peno

AMG/fnv

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

Elizabeth L. Seiser

Mary Ann Spicer

John A. Peno

AMG/fnv