

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

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**SERGIO ASCENIO**

Claimant,

and

**R J PERSONNEL INC**

Employer.

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**HEARING NUMBER: 11B-UI-11491**

**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: 96.5-1-J, 96.6-2**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 871 3.3(3).

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Monique F. Kuester

**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. The employer testified that the first time the claimant talked to Mr. Rodriguez was on Monday, February 4<sup>th</sup>, 2011, which was a Friday. There was no record that the claimant was ever issued a separate notification form in Spanish. See, Iowa Code section 96.5-1-j (2011) The claimant indicated that he was called Rodriguez the day following his separation. The employer's records show that Rodriguez was on vacation, and it is possible that the claimant did call. I would note that the claimant is a non-English-speaking person. All these factors taken into consideration, lead me to find the claimant more credible than not that he did notify the employer of the assignment's end. Thus, I would allow benefits provided the claimant is otherwise eligible.

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John A. Peno

AMG/lms