

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

GABRIEL CEJA-GARCES

Claimant,

and

ARMOUR ECKRICH MEATS

Employer.

HEARING NUMBER: 09B-UI-02784

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: 871 IAC 26.8(5)

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

Monique F. Kuester

AMG/ss

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. The Fact-finding record establishes that the claimant was discharged for absenteeism. The employer implied that the claimant had "pointed out" under their attendance policy. 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 provide any evidence as to the nature of the claimant's absences that led to his accumulation of points. Were these absences excused or unexcused? Having a point system for which an employee "points out" is not dispositive of entitlement for the purposes of unemployment insurance law. The court in Cosper held that absences due to illness, which are properly reported, are excused and not misconduct. Since the record is void of this evidence, I would conclude that the employer has failed to satisfy his burden of proof. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno

RRA/ss