

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

KELLI LAMPMAN	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-08540
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
FRENCH WAY CLEANERS FURRIERS	:	
	:	
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: 96.5-2-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**.

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv

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 record establishes that the claimant had some clothing dry-cleaned, but she did not take the clothing home. Rather, the clothing was left at the employer's place of business for about 2 ½ months because the claimant was off work, got behind on her rent and couldn't afford to pay the dry-cleaning bill.

The claimant had previously made accusations to employer of wrongdoings at his business. If the claimant intended to dry-clean her clothes and *not* pay the bill, a reasonable person would believe she would not have left the clothing at the employer's place of business for 2½ months. The claimant's answers to the employer's questions about paying for her dry-cleaning were made in front of many co-workers. A reasonable person would conclude that her statement was taken out of context or that the claimant misunderstood the employer's question when she answered a straight 'no'. The employer immediately began saying, "...did you hear that?..." to the claimant's co-workers and terminated the claimant. 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). Based on the claimant's testimony, which I find credible, I do not believe the claimant intended not to pay for her dry-cleaning. At worst, she may have exercised poor judgment in failing to remedy the situation in a timelier manner and offering a time she could pay for the dry-cleaning. However, based on this record, I would conclude that the employer failed to satisfy their burden of proof.

John A. Peno

AMG/fnv