

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

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ALEX V GLAY

Claimant,

and

SWIFT & COMPANY

Employer.

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HEARING NUMBER: 09B-UI-04958

EMPLOYMENT APPEAL BOARD  
DECISION

N O T I C E

**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**

D E C I S I O N

**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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Elizabeth L. Seiser

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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 claimant was on a 'last chance agreement' for attendance. The final act involved the claimant's leaving work due to illness on February 11<sup>th</sup>. "Henry or Aaron" told him not to return until he had a doctor's release. The claimant went to the hospital on February 12<sup>th</sup> for which the doctor excused the claimant from work until February 16<sup>th</sup>. He contacted the employer and reported that he would not return to work until February 16<sup>th</sup>; but, the employer does not confirm the claimant's calls.

When the claimant returned to work on February 16<sup>th</sup>, the employer terminated him. The claimant testified that "Henry/Aaron" informed him that even though the claimant called in, "Henry/Aaron" couldn't help him. The employer did not have either Henry or Aaron at the hearing to provide testimony.

I find the claimant's testimony to be credible. He attempted to provide the employer with the doctor's written release on February 16, however, the employer refused to accept it. I would conclude that because claimant's final act was an absence due to illness which was properly reported, that absence should have been excused according to the precepts of Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For this reason, I would allow benefits provided he is otherwise eligible.

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John A. Peno

AMG/fnv

A portion of the claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (a document) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Elizabeth L. Seiser

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AMG/fnv

Monique F. Kuester