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

| NANCY L SOSNOWSKI            | :<br>HEARING NUMBER: 09B-UI-12385 |
|------------------------------|-----------------------------------|
| Claimant,                    |                                   |
| and                          | EMPLOYMENT APPEAL BOARD           |
| HARVEYS BR MANAGEMENT CO INC | :                                 |

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: 96.5-1

## 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

AMG/fnv

Monique F. Kuester

### 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 quit because she felt that the employer was allowing employees to break the law in reporting tips. The employer told employees to report 50 cents/hour when tips were \$20-\$500/day. Even if the employer had an arrangement with the IRS, a reasonable person would believe that reporting as the employer advised might, in fact, be illegal. The court in <u>O'Brien v. Employment Appeal Board</u>, 494 N.W.2d 660 (Iowa 1993) held that the claimant need not prove that the employer's actions that triggered the quit were, in fact, illegal. Rather, the court used the reasonable person standard, which indicates if a reasonable person would believe the employer's actions were illegal, then there is good cause to quit.

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.** 

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv