

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

BRAD F MICKEY

Claimant,

and

HCI CONSTRUCTION

Employer.

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HEARING NUMBER: 13B-UI-03333

**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: 96.5-2-A, 24.32-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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**.

We note that although the Administrative Law Judge found the Claimant quit and disqualified for that reason, the Administrative Law Judge also found that the Claimant committed "disqualifying misconduct." We concur and find that even if this case is viewed as a discharge, misconduct is proven by the Employer.

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. I would find that the Claimant was fired, and did not quit. As to misconduct, the Claimant credibly testified that he was hand digging in areas that were marked, but that the area in question was not marked and it was only for this reason that he did not hand dig there. I would find no disqualifying misconduct proven.

John A. Peno

RRA/fnv