

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

THOMAS C NORMAN

Claimant,

and

**AREA SUBSTANCE ABUSE COUNCIL
INC**

Employer.

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HEARING NUMBER: 13B-UI-06981

**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: 96.5-1

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**.

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would remand the decision of the administrative law judge in its entirety. The Claimant was advised not to return to work, as his previous condition was aggravated by the job. He was depressed because he was not able to work any job for which he applied for SSI. The employer called the Claimant while the Claimant was on FMLA and told him that he needed to resign so that the Employer could fill his position. The Employer called the Claimant numerous times.

Both the Claimant and the Claimant's witnesses provided unrefuted testimony that the Employer repeatedly contacted the Claimant regarding the Employer's intention for filling the position. Even the administrative law judge recognized "...the Employer naturally wanted to move forward..." in response to Ms. Norman's testimony that the Employer 'badgered' the Claimant about returning to work while he was on medical leave. I would find that the Claimant was coerced into resigning. The administrative law judge failed to explore if the Claimant resigned in lieu of discharge (see 871 IAC 26. 26(21)); nor did the administrative law judge elicit any testimony regarding the able and available issue, which was noticed to the parties. Based on this record, I would remand this matter for further consideration on these questions.

John A. Peno

AMG/fnv