

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

MATTHEW J HAMPTON

Claimant,

and

JENSEN TRANSPORT INC

Employer.

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HEARING NUMBER: 13B-UI-12068

**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**.

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 reverse the decision of the administrative law judge in its entirety. The Claimant responded to the warning letter indicating that he'd been driving illegally for 5 years for which (according to the Claimant) the Employer was aware. The Employer denied having such knowledge. When the Claimant told the Employer he would no longer drive illegally, the Employer responded that his pay would decrease dramatically.

The Employer maintains that the Claimant was terminated for responding as he did to the warning letter. I would note that if the court relied on the Claimant's letter, the entire letter must be taken into consideration. The Claimant provided detailed information in the letter that corroborates that the Employer was, in fact, aware of the Claimant's driving activities from 2007 through 2011. A reasonable person would conclude that the Employer had knowledge based on the fact that it was the Employer who dispatched the Claimant's driving assignments. Based on this record, I would find that the Employer failed to prove that the Claimant was discharged for a current act. For this reason, I would allow benefits provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv