

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

CRAIG R PFOHL

Claimant,

and

DUBUQUE STAMPING & MFG INC

Employer.

HEARING NUMBER: 08B-UI-08595

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

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact by adding the following:

The claimant requested a day off which he knew was a 'closed day'. Accordingly, the employer denied his request. The claimant also knew that an absence on a 'closed day' was considered an occurrence that would be handled as such pursuant to the employer's attendance policy. (Tr. 8)

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law by adding the following:

The claimant's failure to report to work after asking for a 'closed day' off and being subsequently denied was insubordination. In light of his past failures to follow the employer's directives, the claimant established a pattern of such behavior when it came to attendance. Continued failure to follow reasonable instructions constitutes misconduct. See, Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

In addition, both parties submitted written arguments to the Employment Appeal Board. The Employment Appeal Board reviewed both arguments. A portion of each argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the arguments and additional evidence (documents) were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence from both parties is not warranted in reaching today's decision.

Lastly, an overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/ss