

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

ESTEVEN OCHOA

Claimant,

and

LOGISTIC SERVICES INC

Employer.

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HEARING NUMBER: 12B-UI-09945

**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, 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 Employer terminated the Claimant for failing to rotate product on July 5, 2012. The Claimant became very busy and inadvertently left the product in the isle, which created a safety violation. He received a prior warning back on January 15, 2012, approximately 6 months ago. I would not characterize his mistake as repeated negligence such that it would rise to the legal definition of misconduct. His action was unintentional and no harm came to the Employer. For this reason, I would conclude that misconduct was not established. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv