

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

JEFFREY DAVIS

Claimant,

and

G & K SERVICES CO

Employer.

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HEARING NUMBER: 10B-UI-01173

**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: 96.5-2A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board 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**.

The Employment Appeal Board would cite Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984) as supporting authority. The court in Warrell held that persons who are on probation because prior bad acts do not have the same protection as other employees.

In addition, the record establishes that the Claimant is governed by federal law. The Code describes how to handle such situations:

2. Applicability. This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law....

Iowa Code §730.5(2); see also 49 USC §31306(g); 49 CFR 382.109. Federal law states that an employer of an operator of a commercial motor vehicle “may require that post-accident testing of such an operator be conducted when ... significant property damage occurs in any other serious accident involving a commercial motor vehicle.” 49 USC 31306(b)(2). These provisions, in addition to the law allowing for rehabilitation testing, would allow the test in this case.

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv