

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

MICHAEL RICHARDS

Claimant,

and

EMCO ENTERPRISES INC

Employer.

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HEARING NUMBER: 07B-UI-10486

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**.

Elizabeth L. Seiser

Mary Ann Spicer

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant contacted the employer on October 9th, leaving a message that he was taking medical leave. The claimant was hospitalized from October 10th through the 12th and was unable to call the employer from the hospital. (Tr. 8, lines 7-14) His next correspondence with the employer was October 15th, at which time the employer informed him that he was no longer employed because he didn't have enough time or seniority to qualify for a medical leave of absence. It is obvious that the claimant should have produced a doctor's excuse, however given his termination, he reasonably believed he had no need to submit such documentation. The employer does not contest that the claimant had a medical problem, only that he didn't qualify for any time off. For this reason, I would conclude that although the claimant may have used poor judgment, his absence should have been considered excused as the employer was aware that he was out due to medical reasons. The court in Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. Benefits should be allowed provided he is otherwise eligible.

John A. Peno

AMG/kjo