

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

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**BURDETTE R DANIELSON**

Claimant,

and

**TEMP ASSOCIATES - MARSHALLTOWN**

Employer.

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**HEARING NUMBER: 11B-UI-15207R**

**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: 96.6-2**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, 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**.

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Monique F. Kuester

**CONCURRING OPINION OF ELIZABETH L. SEISER:**

I agree with my fellow board member that the administrative law judge's decision should be affirmed; however, I would note that at the hearing, which was held as a result of the Board's remand, the employer testified to the faxed document.

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Elizabeth L. Seiser

**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. This employer must be held to the same standard as other parties involving administrative appeals. There was no ambiguity in the Board's remand decision that explained the importance of this evidence, which went to the heart of the issue to be determined, i.e., timeliness. In remanding this matter back to the administrative law judge, the employer was allowed time and an opportunity to present this fax at the new hearing. Although the employer testified to its contents (which the employer had already done at the first hearing), the employer (again) did not produce this document at the second hearing to be a part of the record as so ordered by the Board. Instead, the employer sent the fax document to the Board after the fact of the second hearing before the administrative law judge and outside of the record. The administrative law judge did not leave the record open to accept this document. I would consider this fax document new and additional evidence that should be denied because good cause was not established as to why it wasn't presented at the hearing.

I would also note that there should be no denial of benefits for any ruling on the separation issue related to this reversal.

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John A. Peno

AMG/kk