

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

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CHRISTOPHER G BEFORT

Claimant,

and

LENSCRAFTERS INC

Employer.

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HEARING NUMBER: 09B-UI-01352

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**.

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Elizabeth L. Seiser

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Monique F. Kuester

AMG/fnv

**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 continued to ask a co-worker questions about Kosher foods in which he followed the co-worker from the back room. The employer seemed to pile on past instances in which the claimant received no more than a verbal warning. There is no evidence that the claimant was ever told that his job was in or would be in jeopardy for harassment based on his behavior. While the claimant may have used poor judgment, I would conclude that his actions did not rise to the legal definition of misconduct. Even though the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For this reason, I would allow benefits.

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John A. Peno

AMG/fnv