

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

TIMOTHY A BRANDT

Claimant,

and

SPHERION ATLANTIC ENTERPRISES
LLC

Employer.

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HEARING NUMBER: 09B-UI-02878

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

D E C I S I O N

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**.

The Employment Appeal Board would comment that the record establishes that the claimant did receive a letter (Tr. 7), and was notified of tests by a doctor. The claimant also acknowledged that the result would have been positive and it was for that reason that he declined a split sample. Thus, it is clear that the employer substantially complied with Iowa Code section 730.5.

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 administrative law judge's decision. The claimant had a work-related hand injury that required medical treatment. This circumstance led to a drug test in which he tested positive for cocaine and marijuana usage that he admitted smoking in the prior week. However, I find this record lacks substantial evidence to prove that the employer complied with the Iowa Code section 730.5 notice requirements to send test results by certified mail as set forth in Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003).

John A. Peno