

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

ANTOINE BELL

Claimant,

and

BEDSEN OPERATIONS INC

Employer.

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HEARING NUMBER: 11B-UI-05821

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

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, 96.6-2

D E C I S I O N

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. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge's decision as to the separation issue, and remand the able and available issue.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 871 3.3(3).

Monique F. Kuester

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 on the separation issue, and remand to Claims for a resolution of the able and available issue. Although I agree that the claimant's appeal is timely, however, I would find that the employer advised the claimant in September of 2010 to quit his other job in order to take on the position of manager. This position started out as full-time. The claimant's hours dwindled to 30 hours or less, and then from 24-25 throughout the months of December through January, which I would consider a change in his contract of hire making the claimant eligible for benefits.

His going back to school raised the question about his availability for work. However, the claimant's cell phone disconnected before the claimant could answer the administrative law judge's question as to whether he was a full-time student, which could also have a bearing on his eligibility.

John A. Peno

A portion of the claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Monique F. Kuester

AMG/lms