

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

GLEN C WEBER

Claimant,

and

WEST LIBERTY FOODS LLC

Employer.

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HEARING NUMBER: 08B-UI-03357

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: 96.5-2-a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The 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. Sieser

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. The employer provided hearsay testimony that the claimant was yelling “stupid” and harassing a co-worker named Andrea Wehr, which the claimant denies. (Tr. 2, lines 32-33, Tr. 6, lines 30-32) The employer also alleges that the claimant was arguing with his supervisor to which he also denied. (Tr. 6-7) The claimant admits yelling in the work place and that “...other team members... hollered right straight to their face and... they never got discharged or anything...” (Tr. 7)

The employer failed to provide an eyewitness to the incident to corroborate the employer's testimony, nor did the employer provided Ms. Wehr as a witness to refute the claimant's testimony. Thus, I would attribute more weight to the claimant's version of events. While 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).

Based on this record, I would conclude that the employer failed to prove by a preponderance of evidence that the claimant committed job-disqualifying misconduct. For this reason, I would allow benefits provided the claimant is otherwise eligible.

John A. Peno