

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

GABRIEL MARTINEZ	:	
	:	
Claimant,	:	HEARING NUMBER: 07B-UI-08703
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
THE EASTER SEAL SOCIETY OF IA INC	:	
	:	
Employer.	:	

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 ALLOWED IF OTHERWISE ELIGIBLE

The employer 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. Seiser

John A. Peno

AMG/fnv

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer states that Mr. Martinez was asked to sign a written warning, however, the claimant refused to sign it. (Tr. 9, lines 10-15)

Through testimony, Mr. Martinez admits that Ms. Johnson explained everything written in the disciplinary action. It is undisputed that Mr. Martinez was discharged not for attendance issues, but for his refusal to sign the "Written Disciplinary Action." Mr. Martinez states that Ms. Johnson told him that his refusal to sign was the reason for his termination. (Tr. 10, lines 6-11) The employer informed Mr. Martinez that his signature was only an acknowledgment that the warning was received and discussed.

What is in conflict is whether Mr. Martinez was told that his job was in jeopardy because of his failure to sign. Yet, the employer's testimony provides clear evidence that Mr. Martinez was aware of the consequences of such a refusal. It was the claimant's challenge of the allegations in the warning that prompted his rebuttal letter. I would conclude that Mr. Martinez' refusal to sign the written warning was beyond a good faith error in judgment, as it constituted insubordination as a matter of law citing Green v. Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980). Green held that a claimant's failure to acknowledge the receipt of a written reprimand by signing such a warning was work-connected misconduct. For this reason, benefits should be denied.

Mary

Ann

Spicer

AMG/fnv