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

JEREMY J FORTMANN	:	
	:	**HEARING NUMBER:** 11B-UI-05801
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
ART PAPE TRANSFER INC	:	
Employer.		

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 ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member concurring, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact by adding the following:

The Employer provided the claimant with several verbal warnings about his attendance as well as sent a warning via text message when he was a no call/no show on March 5, 2011 to which he ended up reporting to work a half hour later. (Tr. 5)

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law by deleting the first full paragraph on p. 3 of the decision; and adding the following in its place:

Although the record establishes that the claimant may not have been 'officially' warned about his absences, he was nevertheless on notice that his job could be in jeopardy if his attendance didn't improve. The fact that the Employer failed to take immediate action by terminating the claimant on the date of the final incident (March 14th), and instead allowed him to remain employed and performance duties until the end of his work shift over the one week later (March 22nd) takes away the currentness of the final act. The court in Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharged constituted a "current act," the date on which the conduct came to the Employer's attention and the date on which the Employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis.

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Monique F. Kuester

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Elizabeth L. Seiser

CONCURRING OPINION OF JOHN A. PENO:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would not modify the decision in any manner.

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John A. Peno

AMG/fnv