

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

VICTOR A BENNINGTON

Claimant,

and

SWIFT PORK COMPANY

Employer.

:
:
:
:
:
:
:
:

HEARING NUMBER: 12B-UI-04115

**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

DECISION

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**.

Monique F. Kuester

Cloyd (Robby) Robinson

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 Claimant's supervisor, John Mills, was upset because the line was down. Mr. Mills was standing beside the Claimant when the Claimant had the power shut down. The Claimant was two feet from the power switch. The Claimant was attempting to lock out when Mr. Mills, again, 'rushed' the Claimant to complete the job. The Claimant was trying to satisfy Mr. Mills and, inadvertently, did not take the time to put his lock on the area. Although I understand the importance of the LO/TO procedure, I also understand the pressure a supervisor can put on an employee to keep production going. The record contains no evidence that the Claimant had a habit of violating this rule. 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).

I would note that Mr. Mills was not provided as a witness to refute any of the Claimant's firsthand testimony. Under the circumstances that the Claimant described, I would conclude that find that Claimant's "...[inadvertency] or ordinary negligence in [this] isolated [instance]...[should] not to be deemed misconduct within the meaning of the statute." 871 IAC 24.32(1)"a". Benefits should be allowed proceed the Claimant is otherwise eligible.

John A. Peno

AMG/fnv