

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

RANDALL T KROHN

Claimant,

and

RASMUSSEN FORD-MERCURY INC

Employer.

HEARING NUMBER: 09B-UI-11921

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 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**.

The majority would also comment that the claimant's service manager, Jason Neilson, was aware of the claimant's severe sunburn and suggested that he leave work early. Thus, he was aware that the claimant left at noon. (Tr. 16) Although the employer did not produce Neilson as a firsthand witness, the claimant's notification of the service manager was acceptable, established procedure.

John A. Peno

Elizabeth L. Seiser

AMG/ss

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant was fully aware that attendance was an issue prior to the final incidents that led to his termination. He had two warnings and he had just completed a probationary period. The claimant testified that he left work because he had sunburn. I would note, as the judge also pointed out, that the claimant had that condition when he left home and it is reasonable to assume that he had suffered from sunburn before and knew that he would be unable to complete his work day. I do not find it acceptable nor reasonable that he believed his telling a co-worker that he was leaving for the remainder of the day was sufficient notification in light of his attendance issues. A reasonable person would believe it would be necessary to directly inform management of his need to leave because of 'health' issues. Based on this record, I would conclude that the claimant's actions clearly constituted misconduct, and I would deny benefits.

Monique F. Kuester

AMG/ss