

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

ALEN BAHIC

Claimant,

and

MENARD INC

Employer.

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HEARING NUMBER: 11B-UI-10128

**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. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 871 3.3(3).

Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant lied on the pre-employment survey when he marked 'no' as to whether he'd been convicted of a felony. The actual job application is not in record, and Mr. Goode did not know whether the same question was actually on the job application. (Tr. 9, lines 23-24) According to his testimony, the employer does not do a background check on all employees. (Tr. 9, lines 22-23) In addition, the employer has no 'hard and fast' rule on hiring felons (Tr. 12, lines 22-24). The employer had no policy that would preclude a felon from being hired.

The claimant was terminated when he disclosed to the employer about his felony conviction after he was offered a job promotion. By this time, the claimant had already worked approximately three years for the employer. While I understand why the employer would not allow the claimant to accept the new position, I would note that the claimant had a good work history. The record lacks any documentation to prove that the claimant lied on the actual employment application; and the employer, admittedly, had no knowledge of whether a question regarding felony convictions was present on the actual job application. For these reasons, I would conclude that the employer failed to satisfy their burden of proof. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno

AMG/lms