

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

JIMMY N PHANKEO

Claimant,

and

TYSON FRESH MEATS INC

Employer.

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HEARING NUMBER: 12B-UI-15455

**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 IAC 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 suffered a work-related injury for which he missed 3-4 days of work. The Claimant did not call in each day to report his absence, nor is there any evidence in the record to support that he was instructed or required to do so. The Claimant went back to his physician on Tuesday, and returned to work on Wednesday, at which time he was terminated. The Claimant testified that he, essentially, had acquired too many points. (Tr. 5) The Employer failed to participate to put forth any evidence as to having a point system attendance policy, and how points are assessed. Even if there were such evidence in the record, I would note that exceeding the allotted number of points in a no-fault attendance policy is not dispositive of misconduct.

John A. Peno

AMG/fnv