

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

MARIE SUMAN

Claimant,

and

OROURKE BROS INC

Employer.

HEARING NUMBER: 10B-UI-12097

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: 96.5-2A

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**.

John A. Peno

Elizabeth L. Seiser

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 terminated for turning in paperwork to get reimbursed for jury duty, which she did not, in fact, serve. (Tr. 9, lines 14-15) The claimant, admittedly, had knowledge of the employer's policy regarding reimbursement for jury duty that the employer clarified on several occasions to the claimant. The claimant also admitted to the employer that she knowingly altered the documents. I find her explanation for failing to clarify that July 20th was a vacation day was extremely convoluted and lacked credible. (Tr. 26, lines 12-19) In addition, her testimony that she had no scheduled meeting nor was summoned to the courthouse (Tr. 27, lines 27-30), but failed to go to work because she believed she was on vacation, also lacks credibility. The claimant's testimony that she intended to use vacation time, but failed to turn it in because she got busy is inconsistent. The record establishes that she did, in fact, turn in the paperwork at the beginning of her workday asserting that all time was spent on jury duty.

I find the employer's testimony more credible (than the claimant's alleged 'oversight') that the claimant knowingly submitted paperwork that did not include jury time, which constituted a falsification of work documents. Although 871 IAC 24.32 (6) specifically pertains to falsification of work applications, which is by law misconduct, the potential negative impact for the employer is the same, i.e., could "... result in exposing the employer to legal liabilities or penalties..."

Everyone should take advantage of the chance to perform their civic duty by serving on jury duty and the employer in my opinion did nothing to dissuade the claimant from service. It is the claimant that committed a deliberate act of misconduct when she knowingly submitted false documents to her employer. The employer was justified in viewing the claimant's action as an attempt to steal from the company. (Tr. 18, lines 8-10) Based on the evidence and testimony at hearing, I would conclude that the employer satisfied their burden of proof. For this reason, benefits should be denied.

Monique F. Kuester

