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

MICHAEL J CLARK	: : : HEARING NUMBER: 09B-UI-14082
Claimant,	
and	: EMPLOYMENT APPEAL BOARD : DECISION
WEST SIDE TRANSPORT INC	:

Employer.

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.

Elizabeth L.	Seiser	
Monique F.	Kuester	

AMG/fnv

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 employer discharged the claimant for being late with a load for the third time. The final act involved his being late with a load to Muscatine. The employer dispatched the claimant in plenty of time to reach his destination. With that, the claimant took a sleep break reasonably believing he would have ample time to make his delivery. Due to circumstances beyond his control (an accident in Cedar Rapids), his delivery was late again, even though he was not involved in the accident. 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). For this reason, I would conclude that disqualifying misconduct was not established as the claimant's action was not intentional.

John A. Peno	

AMG/fnv