

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