

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

JONATHAN STEELE

Claimant

and

ADVANCE SERVICES INC

Employer

HEARING NUMBER: 18BUI-07750

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

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

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact to reflect the Claimant submitted to a ***breath*** test, as opposed to blood test.

Ashley R. Koopmans

James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. Whether or not the Claimant submitted to an appropriate drug test, or how it was administered does not undermine my opinion. I find substantial evidence supports the Employer's testimony the Claimant demonstrated observable signs of impairment, i.e., walking funny, slurred speech, crying, smelled of alcohol, etc., to prove he reported to work under the influence, which violated company policy. In addition, the Employer provided credible testimony regarding his admission to still being intoxicated on the job. For this reason, I would conclude misconduct has been established and benefits should be denied until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

AMG/fnv