

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

PATRICK A SMITH	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-03370
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
PRECISION MACHINE & MFG CO	:	
	:	
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 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. Although this case was analyzed a discharge for which misconduct was not established, I find that this case could also be construed a voluntary quit *without* good cause attributable to the employer based on the record. During the course of the claimant's voicemail, he "... used profanity and referred to the fact that he was -- had had enough of working here and was not going to be work here any longer..." (Tr. 5, lines 29-31)

As for the discharge, I find that the claimant had prior warnings with the most recent one occurring on October 27, 2007 for "further" violations of company policy. (Tr. 7, lines 21-29) His repeated violations of the company's mutual respect policy constitute misconduct in that his actions were "... a deliberate violation or disregard of the standards of behavior which the employer [had] the right to expect of [him]..." See, 871 IAC 24.32(1)" a."

Throughout the transcript, it is clear that the employer made honest attempts to deal with Mr. Smith's behavior issues and repeatedly kept the claimant informed that his employment was at risk. Thus, the claimant had knowledge that his job was in jeopardy and should have taken measures to secure his continued employment. For these reasons, I would conclude that the employer satisfied his burden of proof. Benefits should be denied.

Monique F. Kuester