

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

---

ENOCH HIGBEE	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-03458
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
BURKE MARKETING CORPORATION	:	
	:	
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

AMG/fnv

**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. Since the claimant was in management, a reasonable person would assume that he should have known that playing cards, personal use of computer and watching DVD's during work time could result in termination. I would also note that while it is unclear when actual break times occurred, the fact that the claimant could get away with this behavior leads me to believe that personnel responsible for his oversight might be culpable for misconduct as well. All in all, I find the claimant's lack of credibility to be a determining factor and benefits should be denied.

---

Monique F. Kuester

AMG/fnv

A portion of the employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (documents) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

---

John A. Peno

---

Elizabeth L. Seiser

---

Monique F. Kuester

AMG/fnv