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

BLANE D NYE	: HEARING NUMBER: 19BUI-07536
Claimant	
and	EMPLOYMENT APPEAL BOARD
BAGCRAFTPAPERCON II LLC	
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: 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant 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 Reasoning and Conclusions of Law to include the following:

The Claimant failed to prove he was genuinely attached to the labor market such that would make him able and available for work for the purposes of being eligible for unemployment benefits.

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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. Although the Claimant has a medical condition, the record supports he had good days and bad days at work until his separation. I find it difficult believe he was totally incapable of performing some type of work. The Claimant attempted to find suitable employment, which establishes he was able and available for work, and that he was earnestly and actively seeking work in accordance with unemployment compensation law. I would also note that while the Claimant had applied for SSDI benefits, he had no assurance he would be determined eligible to receive them. He also continued his work search. Based on this record, I would conclude he was eligible for benefits during the time period at issue, and should owe no overpayment.

AMG/fnv

Kim D. Schmett