

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

JOHN P UMSCHIED

Claimant,

and

STATELINE COOPERATIVE

Employer.

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HEARING NUMBER: 09B-UI-01386

EMPLOYMENT APPEAL BOARD
DECISION

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 DENIED

The Claimant 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**.

Elizabeth L. Seiser

Monique F. Kuester

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 didn't know until the Fact-finding Interview that the claimant had hired a stockman (Travis Olson) to cover him from November 26th to November 30th. The claimant returned to work on December 1st, for which the stockman corroborated his testimony. The claimant was not present during the timeframe that Dr. DeBuse believed that the pigs were not fed. The claimant, who had authority to hire Mr. Olson acted reasonably and in good faith in hiring a stockman who had previously worked for Dr. DeBuse. The claimant is also a pig owner and would not have willfully allowed this tragic situation to occur. 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). This was, no doubt, a terrible situation; however, the employer failed to prove by a preponderance of evidence that the claimant was the responsible party. For this reason, I would allow benefits provided the claimant is otherwise eligible.

John A. Peno