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

PENNIE L JEW	: : <b>HEARING NUMBER:</b> 09B-UI-00806
Claimant,	: HEARING NUMBER: 095-01-00000
and	: EMPLOYMENT APPEAL BOARD
SCHUSTER GRAIN CO INC	: DECISION :
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 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	

# AMG/fnv

## 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. Mr. Shoep testified that the claimant told him to "f-ck off!" The claimant testified that Mr. Schoep was berating her, telling her that she was incompetent, useless and worthless. (Tr. 13, lines 19-24) The claimant admits that she hung up on him, but denied using any profanity. The employer did not refute the claimant's testimony. The employer failed to prove by a preponderance of evidence that the final act was disqualifying misconduct. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno	

AMG/fnv