

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

CARL NORMAN

Claimant,

and

BEEF PRODUCTS INC

Employer.

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HEARING NUMBER: 10B-UI-10005

**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, 871 IAC

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**.

Monique F. Kuester

Elizabeth L. Seiser

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 claimant's final absences were for illness and were properly reported. The court in *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. The record establishes that the employer's attendance policy allows the accumulation of attendance points for such properly reported absences and also required the claimant to see a doctor for any absences due to illness. In *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa 2007), the court held that a discharged employee's final absence, for which she did not present the required doctor's note, was excused as a matter of law, and therefore not misconduct. For this reason, I would allow benefits provided the claimant is otherwise eligible. As for the claimant's absence on June 17th, I would find it irrelevant to the outcome of this case, as the claimant was discharged the day before.

John A. Peno

A portion of the Claimant'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

Monique F. Kuester

Elizabeth L. Seiser