

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

ZACHARY L BARGER

Claimant,

and

THE AMERICAN BOTTLING COMPANY

Employer.

HEARING NUMBER: 09B-UI-13231

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 ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board 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**.

The majority members of the Employment Appeal Board would comment that due to the lack of the employer's participation, there was insufficient evidence at the hearing. If we were able to consider the employer's testimony and/or evidence, the outcome of this matter may have been different since there appears to be no doubt that the claimant had a positive drug test.

Elizabeth L. Seiser

AMG/fnv

Monique F. Kuester

CONCURRING OPINION OF JOHN A. PENO:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would not join in my fellow Boards members' comment.

John A. Peno

AMG/fnv

The employer has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not follow the instructions on the notice of hearing. Therefore, good cause has not been established to remand this matter. The remand request is **DENIED**.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv