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

TAMMY M ROCHE

Claimant,

and

EMPLOYMENT APPEAL BOARD
DECISION

DAVENPORT CLEANERS INC

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 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.

John A. Peno	
Monique F. Kues	ster .

CONCURRING OPINION OF ELIZABETH L. SEISER: The case is made close by the past history of conduct between the Claimant and Mr. Vlahoules. The Claimant had repeatedly complained of demeaning verbal castigation by Mr. Vlahoules. The vice-president, Sue Davenport, at some point spoke to Mr. Vlahoules and told him to "try to keep this stuff out of work." (Tran at p. 23). This strikes me as a remarkably mild rebuke under the circumstances. As far as the record shows Mr. Vlahoules had not received discipline in the past, nor was he disciplined for hitting the Claimant during the exchange that led to the Claimant's discharge. But while the history between the Claimant and Mr. Vlahoules gives the Claimant cause to complain of her work environment it did not justify the Claimant's actions in the final incident. The Claimant ultimately initiated the physical contact in the final incident by straight-arming Mr. Vlahoules in the forehead when she could have retreated instead. Mr. Vlahoules also retaliated and pushed the Claimant when he could have retreated. Thus it is difficult to understand why serious discipline was not also imposed on Mr. Vlahoules. Nevertheless this does not change the fact that the Claimant initiated physical contact and was not acting out of the necessity of self defense from an assault.

Elizabeth L. Seiser

RRA/ss