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

STEPHEN C KELLER	: HEARING NUMBER: 09B-UI-13793
Claimant,	
and	EMPLOYMENT APPEAL BOARD
WRIGHT TREE SERVICE 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, 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

AMG/fnv

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 discharged the claimant for 'relieving' himself beside a chipper by his truck in a small town. A witness from the community reported the incident to MidAmerican Energy and the city council. The employer's witness, Cory Edward, who is the claimant's supervisor, indicated that he had done the same thing, but not in town. Although the employer does not tolerate urinating in public, the record establishes that in some cases the rule has not been enforced. I would conclude that the claimant's behavior, at worst, was an isolated act of poor judgment that didn't rise to the legal definition of misconduct. Benefits are allowed provided the claimant is otherwise eligible.

John A. Peno

AMG/fnv