

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

TERRY L CHRISTIANSEN

Claimant,

and

WEST BRANCH COMMUNITY SCHOOL

Employer.

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HEARING NUMBER: 10B-UI-05994

**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: 96.6-2

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 had two prior altercations with students: 1) he duck-taped a student's pants onto the student; and 2) he grabbed a student, ripping the student's shirt in the process. In the final act, the employer alleged that the claimant grabbed a student by the arm, leaving bruises. However, the record establishes that that same student had been rough-housing with other students while squirting water on the bus, as well as had participated in a football game two days prior. The fact that the student had football practice that same afternoon could have also been the cause of the bruising. I would note that even though the administrative law judge found the students' accounts to the officer at the time unreliable, they were the only eye witnesses. While the police report may appear convincing, in light of the students prior sports activity, I would conclude that the employer failed to prove by a preponderance of the evidence that the claimant grabbed the student, causing the bruises on the student's arm. Benefits should be allowed provided he is otherwise eligible.

John A. Peno

AMG/fnv