

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

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**MARK O MCCUE**

Claimant,

and

**CARLOS O'KELLY'S INC**

Employer.

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**HEARING NUMBER: 13B-UI-03715**

**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 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**.

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Monique F. Kuester

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Cloyd (Robby) Robinson

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. I would find that the claimant provided unrefuted testimony that the employer came into the cooler yelling and cussing at him. The claimant admits that he was upset with the owner's behavior towards him, but denies threatening the owner. The owner failed to participate in the hearing, and thus, I would attribute more weight to the claimant's version of events. While I understand that employer has a right to expect decency and civility from its employees in the workplace, employees in turn also have reasonable expectation that an employer should act with decency and civility towards its employees. Here, the employer demonstrated behavior that obviously fostered disharmony in the workplace. The claimant's expression of distaste at the employer's belligerent behavior towards him was not a threat, and therefore not misconduct. Benefits should be allowed provided the claimant is otherwise eligible.

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John A. Peno

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

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John A. Peno

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Monique F. Kuester

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Cloyd (Robby) Robinson

AMG/fnv