

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

KEVIN B MCCURN

Claimant,

and

FRENCH WAY CLEANERS/FURRIERS

Employer.

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HEARING NUMBER: 08B-UI-07251

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. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. JOHN A. PENO would affirm and ELIZABETH L. SEISER would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 871 3.3(3).

John A. Peno

AMG/fnv

DISSENTING OPINION OF ELIZABETH L. SEISER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. While I agree with the administrative law judge that this final incident, when considered in light of past incidents of negligence and warnings, constitutes misconduct, I disagree the administrative law judge's finding that the claimant was not discharged for a current act. The final incident was current because the claimant was on notice that his discharge would result if the employer's insurance company would not longer cover him. (Tr. 5) Immediately upon receiving the insurance company's review of the accident and decision not to continue to insure the claimant, the employer initiated the discharge.

Elizabeth L. Seiser

AMG/fnv