

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

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**PHENG Z MORK**

Claimant,

and

**BRIDGESTONE AMERICAS TIRE**

Employer.

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**HEARING NUMBER: 11B-UI-07993**

**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: 96.5-2A**

**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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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. This case involved the employer's random drug test for which the claimant never received any documentation regarding the employer's drug policy. On March 6, 2011, the claimant submitted a sample. He also admitted he had smoked marijuana while off duty. No one from the lab called the claimant. The claimant did receive a certified letter. The employer failed to participate and therefore failed to submit a drug policy or any evidence to satisfy their burden of proof. For this reason, I would conclude that the claimant should be allowed benefits provided the claimant is otherwise eligible.

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John A. Peno

AMG/kk