

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

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ALONDA STRIPP

Claimant,

and

WEST LIBERTY FOODS LLC

Employer.

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HEARING NUMBER: 08B-UI-08678

EMPLOYMENT APPEAL BOARD  
DECISION

N O T I C E

**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**

D E C I S I O N

**UNEMPLOYMENT BENEFITS ARE DENIED**

The claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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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Elizabeth L. Seiser

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Monique F. Kuester

RRA/fnv

**DISSENTING OPINION OF JOHN A PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. Here the eyewitness report of the tearing up was reported to Eulalio who reported this to Mr. McCormick, who e-mailed Ms. Spiesz, who then testified at hearing about the contents of the e-mail. (Tran at p. 4-5). Even treating the e-mail as a business record, and an exception to the hearsay rule, this is still third-hand hearsay. Obviously, this is very attenuated. There is no way of assessing how reliable the identification of the eyewitness is. For me this identification carries little weight in the face of the Claimant's denial.

The Employer did supply testimony that the Claimant admitted to tearing up the document. The admission of the Claimant is not, by definition, hearsay. An admission of ripping one of two sheets is also reported by Plant Manager Greiwe in a written statement which is, however, itself hearsay. (Ex. 3). As far as first-hand testimony this leaves us with two witnesses disagreeing over what was said at a meeting. I would find that the evidence is in equipoise and that the Employer has therefore failed in its burden of proving that the Claimant in fact did rip the sheets in question.

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John A. Peno

RRA/fnv