

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

---

**DAVID W DOHRN**

Claimant,

and

**ARCHER-DANIELS-MIDLAND CO**

Employer.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 11B-UI-07989**

**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, 24.32-7**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring and 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

**CONCURRING OPINION OF ELIZABETH L. SEISER:**

I agree with my fellow board members that the administrative law judge's decision should be affirmed. I would also note that exceeding the allotted number of points in a no-fault attendance policy is not dispositive of misconduct. The court in Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. See

also, Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007) wherein the court held an absence can be excused for purposes of unemployment insurance eligibility even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy.

---

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 was assessed two points for calling in late, which the Claimant testified was due to illness. The administrative law judge referred to the Fact-finding Worksheet in which the Claimant indicated he overslept. The Claimant testified the employer had a progressive discipline policy for which the employer failed to appear at the hearing to produce any such documentation. The record was also void of any evidence as to the reasons for the Claimant's prior absences that led to his accumulation of points. Since the burden is on the employer to establish misconduct, and the employer was not available to provide any evidence of the same, I would conclude that the employer failed to satisfy his burden of proof. Benefits should be allowed provided the Claimant is otherwise eligible.

---

John A. Peno

AMG/fnv