

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

RICHARD LEMKE

Claimant,

and

MANN'S MCDONALD LC

Employer.

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HEARING NUMBER: 12B-UI-00095

**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: 96.5-1

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 Monique F. Kuester 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 IAC 3.3(3).

A portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. According to the Employer's unrefuted testimony, the Claimant had availability issues due to his being in school. (Tr. 6) In addition, the Claimant was in management, and had been issued multiple prior warnings regarding his work performance. (Tr. 7) His failure to report to work for three consecutive days, and without calling in, is a voluntary quit without good cause attributable to the Employer, which is his burden to prove. See, 871 IAC 24.25(4) The Claimant failed to participate in the hearing; thus, the best evidence in the record is that of the Employer. Based on that evidence, I would deny benefits.

Monique F. Kuester

AMG/fnv