BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

CHRISTOPHER K ANDREWS	:
Claimant,	HEARING NUMBER: 12B-UI-10006
and	: : EMDLOVMENT ADDEAL DOADD
RAINTREE ENTERPRISES IOWA INC	EMPLOYMENT APPEAL BOARD DECISION
Employer.	:

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 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**.

Monique F.	Kuester	
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DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant gave a co-worker the finger and said, "F-ck you," while outside the building. The Claimant provided firsthand testimony that the use of profanity is commonplace in the kitchen, which the Employer did not refute. The record is void of any prior disciplines. Although the Employer submitted its work rules into the record, I would note that work rules, alone, are not dispositive of the issue of entitlement to unemployment insurance benefits. At worst, I would view the Claimant's comment, made under duress, to be an isolated act of poor judgment. I would also note that the administrative law judge's finding that the Employer also fired the Claimant's co-worker assumes facts that are not in the record. The Employer's witness, Terri de la Hunt, did not know why the Claimant's co-worker was no longer an employee. Based on this record, I would conclude that the Employer failed to satisfy their burden of proof. Benefits are allowed provided the Claimant is otherwise eligible.

John A. Peno		

AMG/fnv