

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

ALAN ANDERSON

Claimant,

and

SWIFT & COMPANY

Employer.

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HEARING NUMBER: 09B-UI-11664

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. 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**.

Elizabeth L. Seiser

Monique F. Kuester

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 accused of making sexual remarks by employees with whom he had previous confrontations. The employer presented written statements, but failed to produce any firsthand witnesses to corroborate these allegations.

On the other hand, the claimant admitted using the word 'pecker' on two occasions. (Tr. 15) There were no complaints lodged against him until the employer solicited statements. Additionally, the employer offered no evidence of any prior warnings to place the claimant on notice that his job was in jeopardy should such behavior persist. In light of the evidence presented, I would attribute more weight to the claimant's firsthand testimony over the employer's hearsay statements. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno