

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

GENE E MENDICKI

Claimant,

and

CIT CHARTERS INC

Employer.

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HEARING NUMBER: 14B-UI-02016

**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

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. Clyde (Robby) Robinson 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.

486 IAC 3.3(3) provides:

Appeal board decisions. A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

Cloyd (Robby) Robinson

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. I would find the Employer's testimony to be more credible that the Claimant voluntarily quit his employment, which was evidenced by the undisputed fact that he turned in his keys and credit cards. The Claimant admittedly did this based on his belief that he was going to be terminated, which didn't happen. The court in *LaGrange v. Iowa Department Job Service*, June 26, 1984, Iowa Court of Appeals Unpublished Case No. 4-209/83-1081 held that an employee who quits based on his mistaken belief that he will be terminated is deemed a voluntary quit without good cause attributable to the employer when the employer has taken no action to sever his employment.

Monique F. Kuester

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.

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

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv