

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

JESSE GREEN

Claimant,

and

TOTAL DETAILING AUTO SPA LLC

Employer.

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HEARING NUMBER: 12B-UI-11084

**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, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant 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. Monique F. Kuester would affirm and John A. Peno 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).

Monique F. Kuester

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. The record shows that the Claimant was backing a car out of the shop when he accidentally hit a customer's car. Although the customer was honking to prevent the accident, he stopped too late. I would conclude that this was an isolated act that didn't rise to the legal definition of misconduct. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv