ROD S CASE

   Claimant

and

O'REILLY AUTOMOTIVE INC

  Employer

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HEARING NUMBER: 16B-UI-09226

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, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer The claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The Board modifies the decision of the Administrative Law Judge by striking the last two sentences of the second paragraph of page 3 of the decision and in lieu of this states:

Moreover, the Claimant reported his final absence on July 21 as soon as he knew that he would be absent. He cannot report an absence before he knows it is to occur and therefore he cannot be charged with an unexcused absence that day. *See Roberts v. Iowa Dept. of Job Services*, 356 N.W.2d 218 (Iowa 1984); *Floyd v. IDJS*, 338 N.W.2d 536 (Iowa App. 1983).

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Ashley R. Koopmans

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James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. I find that the Claimant's absences were not properly reported and so must be unexcused as a matter of law. Since the unexcused absences are also excessive, I would disqualify the Claimant.

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Kim D. Schmett

RRA/fnv