

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

WILLIAM P KOTAN

Claimant,

and

MIDWEST SOLID WASTE INC

Employer.

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HEARING NUMBER: 09B-UI-10415

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 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**.

The claimant has requested this matter be remanded for the reason that he believes the transcript is incomplete, i.e., words and sentences are missing. A review of the transcript reveals that while there are several incomplete sentences, these incompleteness are for the most part the result of interrupted speech between two people. In a couple of areas, the words are inaudible. In all,

the Board finds these discrepancies do not detract from the overall meaning and content of the record. For this reason, the Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv

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 employer accused the claimant of falsifying documents on June 2nd and June 6th for which the claimant denied receiving a warning on June 2nd. The claimant provided credible testimony that he checked fluid levels on trucks he drove and documented the results. He denied that either truck was low on fluids. The claimant didn't receive any discipline for the two days at issue until the day he was discharged on June 6th. The employer produced no documents or witnesses at the hearing. According to Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976), where, without satisfactory explanation, relevant evidence within control of party whose interests would naturally call for its production is not produced, it may be inferred that evidence would be unfavorable. I would conclude that the record lacks substantial evidence to support that the claimant committed disqualifying misconduct. The employer failed to prove their case by a preponderance of evidence and therefore I would allow benefits provided he is otherwise eligible.

John A. Peno

AMG/fnv