

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

ANDREW J LIBERTUCCI

Claimant,

and

HEARTLAND EXPRESS INC OF IOWA

Employer.

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HEARING NUMBER: 10B-UI-07422

**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: 96.5-1

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**.

Monique F. Kuester

Elizabeth L. Seiser

CONCURRING OPINION OF JOHN A. PENO:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would comment that the claimant was upset because the employer did not get him home 3 out of 4 weekends of the month as he was, initially, told and expected when he requested to switch from the employer's system division to a Kingsport regional driver in December of 2007. (Tr. 11) The claimant complained on several occasions, yet the record shows that he continued to work for more than two years after the switch. By waiting so long to quit, the claimant had essentially acquiesced to the change. See, Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa App. 1990).

John A. Peno

AMG/fnv