

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

SARAH R RIVAS

Claimant,

and

THE CBE GROUP INC

Employer.

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HEARING NUMBER: 10B-UI-05333

**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: 96.5-2A

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**.

Monique F. Kuester

Elizabeth L. Seiser

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 claimant as terminated for allegedly using her cell phone in restroom for which the employer provided no proof. (Tr. 2, lines 16-18) The employer alleges that the claimant hid her cell phone in her desk. When he approached her, the claimant allegedly tried to turn it off when she showed it to the employer. Even if this were true, it is not probative that she used the phone during work hours. For this reason, I would conclude that the employer failed to satisfy their burden of proof. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno

AMG/fnv