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

RUDY LEEMANS	:	
	:	**HEARING NUMBER:** 14B-UI-12721
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
ALLIED BLENDING & INGREDIENTS INC	:	
Employer.		

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

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer 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. Cloyd (Robby) Robinson would affirm and Monique F. Kuester 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.

486 IAC 3.3(3) provides:

> *Appeal board decisions.* A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

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Cloyd (Robby) Robinson

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The administrative law judge based her decision on a current act, which I find completely reasonable that it would take the Employer almost two weeks to complete an investigation that involved the gathering of evidence from relevant individuals and the IT department. This time frame is particularly appropriate given the fact that the primary target of the investigation was a company officer. Additionally, it is understandable why the recipient of the unwanted comments and attention would be reluctant to come forward with harassment claims against the Chief Financial Officer (CFO). The Claimant's letter submitted to the court corroborates the subordinate's reluctance to report the conduct any sooner to senior management.

As CFO, the Claimant was undeniably part of management whose alleged conduct was clearly inappropriate. Because of his position, he is held to a higher standard of behavior than his subordinates. I find his aggressive email message, which was so egregious that it required an apology to all those employees who received it, was against the Employer's interests. That final act involving his inappropriate comments to a fellow company officer could veritably rise to the level of sexual harassment that could subject the Employer to liability.

The Employer issued prior verbal warnings about his behavior, yet his inappropriate behavior persisted. The fact that the Employer failed to notify the Claimant of the pending investigation was not wholly unreasonable in light of the possibility such notification may have given rise to retaliation against his subordinate staff. I would conclude that the Employer provided credible firsthand testimony from the witness who was actually the target of the Claimant's behavior. As such, I would conclude that the Employer satisfied their burden of proof and I would deny benefits.

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Monique F. Kuester

AMG/fnv