

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. I would find there need not be any non-compete clause in the Claimant's contract of hire, as any reasonable person knows going to work for a competitor is a conflict of interest and goes against the interests of his Employer. Here the Employer offered the Claimant full-time employment, and yet the Claimant intentionally chose to accept a competitor's part-time offer of work. For this reason, I would find the Employer satisfied their burden proof. I would deny benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Employer was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman