

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

TYRELL D HOWARD

Claimant,

and

WINNEBAGO INDUSTRIES

Employer.

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HEARING NUMBER: 13B-UI-10206

**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: 96.5-1

DECISION

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 majority Board members would also conclude that this separation could be considered a discharge for which the Employer satisfied their burden of proving misconduct. The Claimant left the premises without permission during his scheduled shift, which could also be construed as insubordination, as his behavior was not in the best interests of the Employer.

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant left his job on the day in question due to diabetic problems. There is a dispute as to whether the Claimant asked, or had preauthorization to leave. The Claimant testified that he asked to go home to get insulin and was told "...do what you have to do." The Claimant returned for his next scheduled shift. Based on these circumstances, I would conclude that the Claimant did not quit his employment. "[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." FDL Foods, Inc. v. Employment Appeal Board, 460 N.W.2d 885, 887 (Iowa App. 1990), accord Peck v. Employment Appeal Board, 492 N.W.2d 438 (Iowa App. 1992). The record lacks evidence to establish that the Claimant had any intention to sever his employment relationship. I would conclude that the Claimant should be allowed benefits provided he is otherwise eligible.

John A. Peno

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv