

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

ROCYCEE WALKER

Claimant,

and

HEARTLAND EXPRESS INC OF IOWA

Employer.

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HEARING NUMBER: 09B-UI-04277

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: 96.5-2-a

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**.

John A. Peno

Monique F. Kuester

DISSENTING OPINION OF ELIZABETH L. SEISER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I would find that the final incident does not rise to the level of misconduct contemplated by the statute. The burden is on the employer to establish that the claimant committed job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Here, the claimant refused a load because he believed it would count as a 'service delivery failure' against him due to its already being late at the time the load was proffered. The claimant had already received a 'service delivery failure' previously. There was no indication that the claimant was told that his refusal would result in his discharge (Tr. 6) or that the load would not incur a 'service delivery failure.' (Tr. 20) For this reason, I would conclude that the employer failed to satisfy their burden and I would allow benefits provided the claimant is otherwise eligible.

Elizabeth L. Seiser