

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

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**ROBERT D SAIGH**

Claimant,

and

**RABINER TREATMENT CENTER**

Employer.

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**HEARING NUMBER: 12B-UI-12784**

**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: 96.4-3**

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant 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. Monique F. Kuester would affirm and John A. Peno 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. See, 486 IAC 3.3(3).

The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

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Monique F. Kuester

**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. The record establishes that when the Claimant was hired, Brandon told him that he would be guaranteed 32-40 hours weekly. (Tr. 14-15) The Claimant's pay record shows that he did, in fact, work at least 32 hours in a normal work week. The Employer had since hired a new manager, Ms. Keller, to get the transportation department under control. (Tr. 11) Ms. Keller reduced the Claimant's hours presumably for business reasons.

Iowa Code section 96.4(3) (2009) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirement of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for the benefits under section 96.5, subsection 1, paragraph "h".

The record establishes that the Claimant continued to be able and available for the 32-40 hours a week as originally guaranteed at his time of hire. Through no fault or choice of his own, the Claimant's hours were reduced because of an alleged slowdown in business.

Iowa Code section 96.19(38) "b" provides:

***An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week*** and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars...

Although the Claimant was not, in fact, a full-time employee, by analogy, the Claimant had established a regular work week consisting of, at least, 32 hours. Once his hours fell below that measure, and he continued to be able and available for work, and I would conclude that the Claimant established his eligibility for unemployment benefits.

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John A. Peno

