

**BEFORE THE
EMPLOYMENT APPEAL BOARD
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
eab.iowa.gov**

DANIEL R KEMNITZ

Claimant

: **APPEAL NUMBER: 24B-UI-04447**
: **ALJ HEARING NUMBER: 24A-UI-04447**

and

:
: **EMPLOYMENT APPEAL BOARD**
: **DECISION**

PRESTAGE FOODS OF IOWA LLC

:
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:
:

Employer

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.

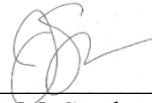
A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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**.



James M. Strohman



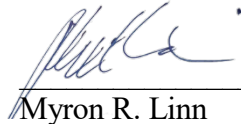
Ashley R. Koopmans

DISSENTING OPINION OF MYRON R LINN:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge.

I do not find the Claimant's reasons for sleeping on the job to be either credible or sufficient to explain his decision to enter a room he is not to be in, close the door, turn the lights off, and sleep. The rule is "willful sleeping on the job in violation of work rules can constitute misconduct under the applicable statute and regulations." *Hurtado v. Iowa Dept. of Job Service*, 393 N.W.2d 309, 310 (Iowa 1986). In *Hurtado* the employee "was discovered sleeping in a restroom by supervisory employees about one and one-half hours after reporting for work." *Hurtado* at 309. Claimants in "sleeping on the job" cases are effectively stealing from the Employer by engaging in an extreme form of goofing-off.

Maybe this Claimant was drowsy. The claimant in *Hurtado* was drowsy too. He had worked long shifts, and had bad nights of sleep because of a bad back and bleeding gums. Still he was denied benefits. What the Court said in *Hurtado* applies directly to this case "even if [Claimant]'s statement of reasons [for sleeping] was believed, ... his unilateral and undisclosed decision to rest his fatigued body at the time and place in question was, nevertheless, a willful or wanton disregard of the employer's interest." *Hurtado v. Iowa Dept. of Job Service*, 393 N.W.2d 309, 311 (Iowa 1986). The Claimant should be disqualified for sleeping on the job.



Myron R. Linn

RRA/mes

DATED AND MAILED June 19, 2024