

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

WALTER GRIDIRON

Claimant,

and

KRAFT PIZZA CO

Employer.

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HEARING NUMBER: 09B-UI-13063

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: 96.5-2-A

DECISION

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**.

Elizabeth L. Seiser

Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant was ill, but attempted to go into work. Before the claimant punched in, he tried to contact supervision but was unable to contact anyone. Line techs are hourly members of management and act as supervisors when no supervisor is present. In the absence of a supervisor, the claimant contacted his line tech and asked to be excused. The line tech told the claimant "no one is going anywhere." The claimant conferred with his union representative and was told that the employer could not force the claimant to stay if the claimant was ill. The union representative's position was corroborated by the employer's testimony. (Tr. 2) "We don't force them to stay." The employer did not have the line tech testify at the hearing. Thus, I would attribute more weight to the claimant's testimony. The claimant was never punched in for the day because he was ill. The claimant may have used poor judgment; however, I would conclude that this was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided he is otherwise eligible.

John A. Peno