

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

MICHAEL L CUPPS

Claimant,

and

WEST LIBERTY FOODS

Employer.

:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 08B-UI-08424

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

AMG/fnv

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 employer would not allow a second confirmatory test because the specimen was not urine. (Tr. 5, lines 6-11) To not allow a confirmatory test because the sample didn't test positive undermines the intent of the law regarding confirmatory split samples, which is to confirm the first test. As defined in Iowa Codes section 730.5, there is no cost to the employer for the confirmatory test if the result is the same as the first result on the original sample. The claimant was denied his right under the law to have his split sample tested. As such, I would conclude that the employer failed to comply with the statute and therefore the test is invalid. Benefits should be allowed provided he is otherwise eligible.

John A. Peno

AMG/fnv