

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

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**ROBERT A COLE**

Claimant,

and

**LF STAFFING SERVICES INC**

Employer.

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**HEARING NUMBER: 13B-UI-05001**

**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: 96.5-2A**

**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**.

The majority Board members would comment that the Claimant's having had a seizure is irrelevant because the Claimant testified that he in fact called in, not that he was incapable of calling in. The issue thus was what evidence about calling in we should credit.

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Monique F. Kuester

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Cloyd (Robby) Robinson

**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 Employer terminated the Claimant for attendance issues alleging that the Claimant quit going to work beginning March 8, 2011 for which he was a no call/no show for 2 days. Although the Employer testified that he had a prior written warning for attendance, the Claimant denied this allegation.

The Claimant testified that he called Labor Finders and spoke with Tracy on March 7<sup>th</sup> and 8<sup>th</sup> to report his illness and that he had surgery the following Monday. The Employer failed to produce any firsthand witness to refute the Claimant's testimony, and presented no other evidence to support their allegations. For which reason, I would conclude that the Employer failed to satisfy their burden of proving disqualifying misconduct. Benefits should be allowed provided the Claimant is otherwise eligible.

AMG/fnv

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John A. Peno