

CONCURRING OPINION OF ELIZABETH L. SEISER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would note that this is a current act. While the incident occurred on February 26th for which the employer was immediately aware, the employer had an intervening three-week plant shutdown. The claimant was suspended upon his return and discharged the next day.

Elizabeth L. Seiser

AMG/ss

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 threw a piece of metal, initially stating it was horseplay, but later testifying that he was trying to get a co-worker's attention. The claimant admits he was wrong. After a three-week plant layoff, the claimant was issued a one-day suspension, and terminated the next day. The record shows he had no discipline since September of 2007 and there is no evidence that he intentionally threw the object at the co-worker. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). At worst, I would consider this to be an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. I would allow benefits provided the claimant is otherwise eligible.

John A. Peno

AMG/ss