

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

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<b>DOUGLAS LUCHA</b>	:	
	:	
Claimant	:	<b>HEARING NUMBER: 20B-UI-05751</b>
	:	
and	:	
	:	<b>EMPLOYMENT APPEAL BOARD</b>
<b>DIANE VEY</b>	:	<b>DECISION</b>
	:	
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-A, 96.3-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Douglas Lucha, worked for Diane Bey-Brenntag Great Lakes, LLC from December 4, 2018 through May 7, 2020 as a full-time material handler working with corrosive chemicals. The Claimant's work schedule varied. At the end of each day, the Employer would tell him what time to report for the next day. His start time was typically 6:00 a.m.

The Employer issued a warning to the Claimant for being tardy in March of 2020. On or about May 1, 2020, the Claimant contacted his supervisor prior to the start of his shift to report that he was running late by a few minutes. The Claimant was scheduled to start at 6:00 a.m., but arrived at 6:10 a.m. The Employer issued a warning to the Claimant for being tardy. The following week, the Claimant was late to work for which the Employer called a meeting on May 7th to terminate him.

The Claimant had no other disciplinary actions against him for any other infractions. He always performed his duties as assigned and did not know his job was in jeopardy. The Employer did not participate in the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.32(4) provides:

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The Claimant provided credible, unrefuted testimony that there were no issues with his work performance. Although he received a couple warnings for being tardy, there was nothing in the record to establish the Claimant had ongoing, excessive and unexcused attendance issues. The Employer did not participate to provide evidence of its attendance policy, if any, such that the Claimant could have known what was expected of him; nor was the Employer available to contradict any of the Claimant's testimony. Based on this record, we conclude the Employer failed to satisfy its burden of proof.

**DECISION:**

The administrative law judge's decision dated July 21, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided he is otherwise eligible.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

AMG/fnv