

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

CAREY D ROBINSON

Claimant,

and

ELLER CONSTRUCTION CO INC

Employer.

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HEARING NUMBER: 10B-UI-08900

**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 ALLOWED IF OTHERWISE ELIGIBLE

The employer 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**.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant called in late and failed to provide any compelling testimony to support her case. Obviously, the claimant would deny the employer's allegations. I would find that this case turns on credibility for which the administrative law judge's decision hung on hearsay. It would have been advantageous for the employer to provide firsthand witnesses, even though the employer's representative (not present at the incident) was the company's owner and the supervisor who provided credible testimony about the final act. While the administrative law judge placed great weight on the employer's lack of witnesses, I would also find that the employer's hearsay evidence was of such a nature as to constitute substantial evidence to overturn the decision. See, Gaskey v. Iowa Dept. of Transportation, 537 N.W.2d 695 (Iowa 1995).

Monique F. Kuester

AMG/fnv