

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

CHARLES D KESLER

Claimant,

and

ACH FOOD CO INC

Employer.

HEARING NUMBER: 08B-UI-07547

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 claimant was driving a stand-up forklift when he accidentally hit the catwalk and was thrown from the forklift. The employer testified that he was thrown ten feet; however, the claimant indicates that he merely fell down and was not injured.

Approximately 45 minutes later, the claimant fell from the forklift, again, breaking his arm and hip. The employer discharged him because the claimant did not report the first accident, which the claimant reasonably believed was not serious enough to warrant reporting. The employer failed to provide a firsthand witness to the accident and the record lacks substantial evidence of any damage to the catwalk. The claimant, on the other hand, is the only eyewitness to the accident who testified as to when and how he was injured. Given the claimant had no prior incidents or warnings in this regard, I would find that his failure to report the first accident, at worst, was poor judgment that didn't rise to the legal definition of misconduct. As such, I would conclude that the employer failed to satisfy their burden of proof. Benefits should be allowed provided the claimant is otherwise eligible.

John A. :Peno

AMG/fnv