

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

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ROBERT D BEERY

Claimant,

and

KEMIN INDUSTRIES INC-ADP

Employer.

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HEARING NUMBER: 08B-UI-11816

EMPLOYMENT APPEAL BOARD  
DECISION

N O T I C E

**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**

D E C I S I O N

**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**.

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Elizabeth L. Seiser

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Mary Ann Spicer

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**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 employer's entire case hinges upon the employer's video. I cannot conclude from the video that the claimant is guilty, as I was unable to see any conclusive evidence that the claimant, in fact, took Mr. Horn's sandwiches. What is visible at 10:09:16 p.m. is an individual removing something from the refrigerator. At 10:10:22 p.m., the individual is at the counter and at 10:10:26 p.m., the individual goes to the trashcan. The individual then sat at the table from 10:10:42 p.m. until 10:16 p.m.

The employer identified this individual to be Louis Blake. However, because the video is not clear, I am unable to discern whether or not it was Mr. Blake who took anything from the refrigerator, nor what was happening at the counter, or what Mr. Blake was doing from approximately 10:10:42 through 10:16 when he left. I am by no means insinuating that Mr. Blake might be the guilty party; only, that I am unable to positively identify either party as being the culprit based on this video. For this reason, I would conclude that the employer failed to prove by a preponderance of the evidence that the claimant is guilty of misconduct. For this reason, I would allow benefits provided he is otherwise eligible.

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John A. Peno

AMG/kjo