

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

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**JOSEPH A FUNK**

Claimant,

and

**MILLERS DIESEL & AUTOMOTIVE INC**

Employer.

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**HEARING NUMBER: 10B-UI-09491**

**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, 871 IAC**

**D E C I S I O N**

**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 concurring, 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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Monique F. Kuester

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Elizabeth L. Seiser

AMG/kk

CONCURRING OPINION OF JOHN A. PENO:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would also note that the employer admits that the claimant volunteered to be laid off because of the lack of work. Now, the employer testified that the claimant was discharged for misconduct. The record is void of any prior warnings, and there was no final act of misconduct close to the May 27<sup>th</sup> date cited. I would conclude that the claimant was discharged for an act that was not current. See, Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). For these reasons, I would allowed provided the claimant is otherwise eligible.

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John A. Peno

AMG/kk

The employer has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

AMG/kk