

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

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BRENT M SVEJDA

Claimant,

and

KINSETH HOTEL CORPORATION

Employer.

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HEARING NUMBER: 09B-UI-04623

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**.

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Elizabeth L. Seiser

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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 believed a felony conviction had been expunged from his record at the time he answered 'no' on his job application. The employer discharged him one year later for lying on the application. Lying on a job application, in and of itself, is not disqualifying for unemployment insurance purposes. Heitman v. Cronstroms Mfg., Inc. 401 N.W. 2d 425, 427-428 (Minn. App. 1987) held that "[t]he falsification or misrepresentation must be materially related to job performance in order to bar the award of [unemployment] benefits."

The claimant's felony conviction was not at issue. (Tr. 18, lines 8-11) The employer failed to substantiate how the claimant's 'lying' on his application would rise to the level of misconduct such that would disqualify him. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For this reason, I would allow benefit provided he is otherwise eligible.

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John A. Peno

AMG/fnv