

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

CODY M CLARK

Claimant,

and

HYPRO INC

Employer.

:
:
:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 11B-UI-10595

**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, 24.32-7

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**.

Monique F. Kuester

Elizabeth L. Seiser

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 final act occurred when the claimant clocked in later on July 6, 2011 as a result of falling asleep in his car while parked in the employer's parking lot. (Rec. @ 10:15) The claimant testified that the employer had no rules on attendance. Most of his absences were due to illness. The employer was not present to refute the claimant's testimony or to present any evidence of an attendance policy or progressive disciplinary policy. Thus, I would attribute more weight to the claimant's version of events, as the employer failed to satisfy its burden of proof. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno

AMG/lms