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

MICHAEL J BERNINGHAUS Claimant, and US POSTAL SERVICE Employer.	:	HEARING NUMBER: 09B-UCFE-00008 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: 96.5-1-d

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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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 off work due to a nervous problem and depression on October 14th, 2008. He quit coming to work from November 13th through the 28th and was too nervous to contact the employer. The employer told the claimant about FMLA; however, on December 12th, the employer sent a separation letter.

The record establishes that the employer was aware of the claimant's medical problems with depression and nervousness. As late as November 28th, the employer had contacted the claimant offering EAP assistance as well as FMLA. The employer admits that the claimant quit coming to work on October 14th, yet, the employer kept communicating with the claimant. Although the claimant failed to follow proper attendance reporting procedures, it is clear from this record that the claimant was incapable of follow-through due to his mental instability. The claimant says or believed that he notified the employer that he was under a doctor's care.

In this case, the greater weight of evidence indicates that the employer was well aware that the claimant was off work due to his medical condition. The claimant lacked the requisite intention to quit his employment. 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). I would conclude that the claimant did not voluntarily quit his employment; rather, his separation was initiated by the employer, which is tantamount to a discharge for which misconduct was not established.

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John A. Peno

AMG/fnv