

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

ROBERT A GROSSMAN

Claimant,

and

CONTRACT TRANSPORT INC

Employer.

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HEARING NUMBER: 10B-UI-00434

**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**.

Elizabeth L. Seiser

Monique F. Kuester

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 involved the claimant's looking for an empty trailer for five hours on a rainy night. The claimant testified that the scuff panel was okay when he checked trailer. He did not see yellow powder in the front of the trailer because he had no way to get up into the trailer. The claimant read a letter from David Gibbons into the record, which revealed that it was Mr. Gibbons who pulled the trailer back to the employer's yard. Gibbons believed that the panels could come loose in the 366-mile trip and says that there was very little powder in the trailer. He explained that he probably would not have seen the powder if it had not been daylight. (Tr. 29-31)

I would also note that the employer became aware of this incident on November 12th, yet did not notify the claimant of his discharge until November 23rd. The court in Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharged constituted a "current act," the date on which the conduct came to the employer's attention and the date on which the employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis. There is nothing in this record to explain the delay, which I find to be unreasonable and could conclude that the claimant was discharged for an act that was not current. Benefits should therefore be allowed provided he is otherwise eligible.

John A. Peno

AMG/fnv

The Employment Appeal Board would also correct the administrative law judge's Statement of the Case to reflect that the claimant's witness, David Gibbons, did *not* participate in the hearing. Rather, his statement was read into the record.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

Monique F. Kuester