# BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

RAMON E JACIUNDE :

Claimant, : **HEARING NUMBER:** 14B-UI-01089

and

: EMPLOYMENT APPEAL BOARD

DEERY BROTHERS INC : DECISION

Employer.

### 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:** 96.5-1

### DECISION

### UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Cloyd (Robby) Robinson would affirm and Kim D. Schmett would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law.

486 IAC 3.3(3) provides:

Appeal board decisions. A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

Cloyd (Robby) Robinson

## **DISSENTING OPINION OF KIM D. SCHMETT:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I would find that the Employer took reasonable precautions to address the Claimant's concerns about his co-worker by issuing the written warning and assuring the Claimant that the workplace was safe. Additionally, I would note that the co-worker did not work in the same building. Thus, I would conclude that the Claimant's quit was for personal reasons, and not attributable to the Employer. Benefits should be denied.

| Kim D. Schmett |  |
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AMG/fnv