

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

ROY R SALCEDO

Claimant,

and

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer.

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HEARING NUMBER: 11B-UI-00954

**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, 871 IAC

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. I would find that the claimant had car problems in November and December. The record reflects that the claimant made a good faith effort to repair his car which included installing a new fuel filter. The claimant received no written warnings that his job was in jeopardy.

While I recognize that transportation is the claimant's responsibility, the claimant's having car problems on his way to work is beyond his control. The final act, which involved the claimant's car breaking down, was properly reported to the employer. The employer has the burden to prove disqualifying misconduct. Here, the employer provided no documentation or witnesses to refute the claimant's firsthand testimony or to support their case. 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 benefits provided the claimant is otherwise eligible.

John A. Peno

AMG/fnv