

AMG/fnv

DISSENTING OPINION OF ELIZABETH L. SEISER:

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 discharged for violating the employer's attendance policy that allows for no more than five unexcused absences a year. The employer deems 'unexcused absences' to be absences accompanied by a doctor's note. The employer's policy is not dispositive of misconduct under unemployment compensation law. There is no testimony as to the prior absences that the claimant incurred, i.e., whether they were properly notified, pertained to health issues, etc.

This record lacks substantial evidence to establish whether the final incident was an isolated act. In the final instance, the claimant failed to report when his vehicle went into a ditch. He called the employer to try apprise them of his delay, leaving messages on the recorded line. The burden is on the employer to establish that the claimant committed job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Based on this record, I would conclude that the employer failed to satisfy their burden of proof. Benefits should be allowed provided the claimant is otherwise eligible.

Elizabeth L. Seiser

AMG/fnv

The claimant submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence (documents) were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

Elizabeth L. Seiser

Mary Ann Spicer

John A. Peno

AMG/fnv