

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

CHRISTIAN L BYERLY

Claimant,

and

DILLARD'S INC

Employer.

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HEARING NUMBER: 10B-UI-05428

**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, 96.3(7)

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. The claimant was acquitted of a prior sexual abuse charge. (Tr. 3, 8) The employer alleges that the claimant made sexual comments to women, i.e., "...dress made legs look good...green sneakers...always on knees... would you have sex with 43-year old man...grabbed groin area and made comment..." (Tr. 2, 3, 4, 9) However, the employer failed to produce any firsthand witnesses at the hearing or corroborating documentation to support these allegations. According to Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976), where, without satisfactory explanation, relevant evidence within control of party whose interests would naturally call for its production is not produced, it may be inferred that evidence would be unfavorable.

The burden is on the employer to prove job-disqualifying misconduct. See, Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

In addition, 871 IAC 24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. *If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established.* In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved. (Emphasis added.)

Because the employer failed to provide any corroborating evidence to support their allegations, I would conclude that the employer failed to satisfy their burden of proof.

John A. Peno

AMG/fnv

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv