

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

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**NADIRAH L CHERUIYOT**

Claimant,

and

**WEAVER ENTERPRISES LTD**

Employer.

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**HEARING NUMBER: 10B-UI-15748**

**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: 96.5-2A**

**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**.

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Elizabeth L. Seiser

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Monique F. Kuester

AMG/fnv

**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 record establishes that the claimant was discharged for being a no call/no show on one day. The record is void of any attendance problems or disciplines for attendance. The claimant received only one prior written warning for leaving the drive-through window open. 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). A one-day absence, even though it was a no call/no show, did not rise to the legal definition of misconduct such that benefits would be denied. For this reason, I would conclude that the employer failed to satisfy their burden of proof. Benefits should be allowed provided the claimant is otherwise eligible.

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John A. Peno

AMG/fnv