

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

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**DINO P COSTANZO**

Claimant,

and

**WILLIS CADILLAC INC**

Employer.

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**HEARING NUMBER: 11B-UI-07823**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**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, 24.25-37**

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member concurring, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law to indicate that the Claimant is only denied benefits during the period between his separation from Willis Cadillac and the start of his new employment. We would also note that his separation from Willis Cadillac is not disqualifying one, and the employer's account shall not be charged.

Iowa Code section 96.5(1)(a) (2009) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:



The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In addition, 871 IAC 24.28(5) provides:

The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employer does not have to be covered employment and does not include self-employment.

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John A. Peno

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Elizabeth L. Seiser

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety without any modification.

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Monique F. Kuester

AMG/fnv