

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

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**DEBRA E MARTIN**

Claimant,

and

**CRST FLATBED REGIONAL INC**

Employer.

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**HEARING NUMBER: 12B-UI-15471**

**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**

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

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

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Monique F. Kuester

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I would find that the Claimant stopped driving on November 2<sup>nd</sup>, 2010 because her co-driver was unsafe for which the Employer eventually sent the co-driver to safety training. The Claimant, a team driver, could not drive during this time because no other drivers were available. (Tr. 9) I would conclude that the Claimant was eligible until December 20<sup>th</sup>, 2010 when she became an independent contractor driver. (Tr. 7)

In addition, I would delete any reference to *Cobb v. Employment Appeal Board*, 506 N.W.2d 445 (Iowa 1993), as this case does not involve a health-related issue.

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John A. Peno

AMG/fnv