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

CRYSTAL L FOWLER	: : : <b>HEARING NUMBER</b> : 08B-UI-05006
Claimant,	: HEARING NOWBER. 000-01-05000
and	: EMPLOYMENT APPEAL BOARD : DECISION
TJ HUNTERS PUB & GRUB INC	: BEGISTON
Employer.	

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

## DECISION

## UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, 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**.

John A. Peno	
Elizabeth L. Seiser	

## CONCURRING OPINION OF MONIQUE F. KUESTER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed. I would find that the employer believed, and I agree, that there were legitimate business reasons for discharging the claimant as far as excessive unexcused absenteeism. However, the facts as presented during the hearing did not constitute a disqualification for unemployment insurance benefits.

The employer advised the claimant that her job was in jeopardy and the claimant admitted that she was aware that her attendance, appearance and personal problems were issues. However, as the administrative law judge pointed out in the Reasoning and Conclusions of Law, the employer failed to prove that the claimant was unaware of her correct schedule time. Therefore, the final act does not constitute misconduct. Benefits should be allowed provided she is otherwise eligible.

Monique F. Kuester	

AMG/kjo