

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

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**LOIS J SANKEY**

Claimant,

and

**BANK OF AMERICA NA**

Employer.

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**HEARING NUMBER: 12B-UI-04005**

**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**

**DECISION**

**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 dissenting, 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 on p. 2, by striking the second sentence of the second full paragraph, i.e., "...It is noteworthy that Ms. Sankey told the fact-finder that she place the envelope in her purse, while Ms. Sankey testified on appeal that she placed the envelope beside her purse..."

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Monique F. Kuester

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Cloyd (Robby) Robinson

**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. I would find that the Claimant inadvertently shorted a customer \$4 on a transaction for which she placed the \$4 in an envelope to return to the customer. The Claimant then notified her supervisor of the \$4 shortage. At the end of the day, the Claimant was \$106 over to which she contacted that same supervisor to rectify the \$106 overage. The Claimant provided credible testimony that in the past, if business was shorted, the tellers would take the shortage to the customer at the end of the day. This process was okayed by the supervisor.

The Employer failed to participate in the hearing to refute any of the Claimant's firsthand testimony; thus, there was no evidence or testimony in the record that the Claimant told the Fact-finder that she placed the envelope in her purse. I would find this information irrelevant and the administrative law judge's assumption of these alleged facts to be misplaced. The Claimant's intention was to deliver the \$4 to the customer. Based on this record, 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