

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

SHAMIKA G RAINER

Claimant,

and

DUBUQUE COUNTY

Employer.

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HEARING NUMBER: 12B-UI-13655

**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. 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).

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. The Claimant had numerous absences and received written warnings. The final act involved the Claimant's child being ill for which she called and left the employer a message. The Employer testified that the Claimant was advised that she must speak to a supervisor; however, the Claimant refutes this indicating that she was never informed of such a requirement as well as the Employer had no such policy in writing. The Employer corroborates that fact with their admission that there is no written company rule, or policy in the collective bargaining agreement that says an employee must contact a supervisor to report an absence.

I would find the Claimant's final absence was excusable if it was properly reported. Although the Employer's witness, Ms. Chamberlain, testified that the Claimant was aware that she could not leave a message, the Claimant denied having such knowledge, which I attribute greater weight to the Claimant's testimony. Based on this record, I would conclude that the Employer failed to satisfy their burden of proof.

John A. Peno

AMG/fnv