

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

JESSICA CLARK	:	
	:	
Claimant,	:	HEARING NUMBER: 08B-UI-02097
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
HEARTLAND INNS OF AMERICA LLC	:	
	:	
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 DENIED

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

Elizabeth L. Seiser

Monique F. Kuester

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. The claimant was discharged for excessive unexcused absenteeism. The final act, initially, occurred when the claimant called the employer to report that her keys and cell phone had been stolen. (Tr. 5, lines 8-12) Later that same day, she contacted the employer to report her absence because her brother assaulted her (fist fight), which involved the police. The employer told the claimant to submit a police report to verify her absence for which the claimant produced a "police number only". (Tr. 6, lines 1-3) The claimant did not have the \$20 necessary to obtain the police report. Instead, she submitted "a card from the police department that had... a name on it and a number on it..." (Tr. 7, lines 13-14)

I would find that the claimant substantially complied with the employer's request to verify her absence. The record establishes that she suffered not only theft of her personal property, but a physical assault wherein she experienced her hair being pulled out. This altercation justifiably caused her to miss work. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

Although the claimant was on a final warning with regard to attendance, the record supports that she did call in her final absence and due to the circumstances, that absence was excusable. The court in Gaborit v. Employment Appeal Board, 743 N.W.2d 554 (Iowa 2007) held that a discharged employee's final absence, for which she did not present the required doctor's note, was excused as a matter of law, and therefore not misconduct. This case is analogous in that the employer required other documentation (police report) to verify her absence. The claimant's failure to provide it should not have rendered her absence unexcused under the circumstances. This claimant provided the employer with information necessary to prove the reason for her final absence. For this reason, I would conclude that the claimant should be allowed benefits provided she is otherwise eligible.

John A. Peno