

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

ELIZABETH M MAXTED

Claimant,

and

CARE INITIATIVES

Employer.

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HEARING NUMBER: 12B-UI-15541

**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: 96.5-2-A

D E C I S I O N

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 record establishes that the Employer has a no fault point system for attendance. The Claimant was assessed daily points when she missed work due to illness that was documented with a doctor's excuse. The Claimant was also charged points because she missed work due to a work-related injury. (Tr. 14, lines 15-18) The Employer did not refute the Claimant's testimony regarding these absences. The Employer's no fault attendance policy is not dispositive of the Claimant's entitlement to benefits. The court in *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. See also, *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007) wherein the court held an absence can be excused for purposes of unemployment insurance eligibility even if the Employer was fully within its rights to assess points or impose discipline up to or including discharged for the absence under its attendance policy.

John A. Peno

AMG/fnv