

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

MELISSA E ROTENBURGER

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 12B-UI-15988

**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: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer 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. John A. Peno would affirm and Monique F. Kuester 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).

John A. Peno

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. As the administrative law judge points out, there are clearly two conflicting version of events for which I find the Employer's testimony more credible. The Claimant testified that her position as a part-time/on-call employee was very stressful. (Tr. 6) The Claimant did not refute this testimony; and while she argues that she "...[didn't] recall ever saying that [she] would not take [the full-time position]..." I find it illogical to believe that taking on the full-time position from her standpoint would make sense. I believe she was seeking other employment and chose to quit her position to do so. For these reasons, I conclude that her quit was without good cause attributable to the Employer.

Monique F. Kuester

AMG/fnv