

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

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**DIANE K KING**

Claimant,

and

**HY-VEE INC**

Employer.

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**HEARING NUMBER: 10B-UI-06410**

**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. 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**.

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Monique F. Kuester

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Elizabeth L. Seiser

**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 denied the employer's allegations regarding the customer complaints. The claimant only admitted that she told customers that they had not seen her in the store because her hours had been cut. I would attribute more weight to the claimant's firsthand testimony than the hearsay testimony provided by the employer. Although the employer testified that the February 20<sup>th</sup> customer complaint was the second such complaint, the employer never issued any warning to the claimant about the same. As for the prior discipline she received, those instances were too remote in time to be considered a current act for termination. Lastly, I would note that the claimant's discussing hours of work and working conditions with fellow employee is protected activity under section 7 of the NLRA, 29 U.S.C. § 157.

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John A. Peno

AMG/kjo