

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

ASHLEY LEE	:	
	:	
Claimant,	:	HEARING NUMBER: 13B-UI-14849
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
THE NEW HOMESTEAD	:	
	:	
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, 96.3-7

DECISION

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**.

Monique F. Kuester

Cloyd (Robby) Robinson

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 in its entirety. The record establishes that the employer had problems with the claimant's performance on several occasions. The claimant received numerous 'coachings'. Prior discipline in the record reveals that the claimant received verbal warnings on June 7, 2012, April 3, 2012 and on March 28, 2012 for which she also received counseling. The most current written warning was issued on May 19, 2011, nearly 18 months prior to her discharge.

I acknowledge that the employer is an 'at will' employer and is free to deviate from their progressive discipline policy. The employer's policy, however, is not dispositive of the claimant's eligibility for benefits under unemployment compensation law. The claimant believed that she was treated differently after reporting a work-related injury. When the administrative law judge questioned if the claimant had a work-related injury, Ms. Caltrider responded 'supposedly,' which adds credibility to the claimant's allegation. I would note that the claimant received a re-education form for her actions on October 29, 2012 that was signed by Ms. Caltrider. The claimant as discharged on November 7, 2012 after Caltrider became DON on November 1st. The claimant felt her job was in jeopardy because of her restrictions due to her work-related.

The employer's discipline form would lead a reasonable person to conclude that the claimant would receive more than a verbal warning which the claimant received five months prior. 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).

The claimant was not put on notice through the employer's implied progressive discipline that her job was in jeopardy. Based on this record, I would conclude that the employer failed to satisfy their burden of proving disqualifying misconduct. As such, I would allow benefits provided the claimant is otherwise eligible.

John A. Peno

AMG/fnv