

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

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**BRITTANY KAUFMAN**

Claimant,

and

**FIVE STAR QUALITY CARE INC**

Employer.

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**HEARING NUMBER: 09B-UI-02144**

**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: 96.5-2-a**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

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**.

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John A. Peno

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Elizabeth L. Seiser

AMG/fnv

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant clearly violated the employer's work rule #46, which sets forth, "Employees may not sleep on the job." The employer had two witnesses to corroborate the employer's allegation. And even though the claimant, initially, denied sleeping when questioned, she later testified that it could have 'appeared' she was asleep due to her experiencing a migraine. (Tr. 11, lines 17-24) If the claimant was ill, she failed to inform the employer. Thus, I would conclude that based on her knowledge of the rule, and her partial admission, i.e., 'appeared' asleep, I would deny benefits.

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Monique F. Kuester

AMG/fnv