

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

KATHRYN A WILLS

Claimant,

and

WEST PARTNERS INC

Employer.

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HEARING NUMBER: 12B-UI-04208

**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**.

Monique F. Kuester

Cloyd (Robby) Robinson

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 Employer issued a verbal warning to the Claimant for being slow and having an attitude. According to the Employer, the Claimant threw an omelet on the floor, which destroyed the product. The Employer directed her to leave, which she complied.

According to the Claimant, the Employer had grabbed a spatula from her hand causing the omelet to drop to the floor. The Claimant denies the allegation of insubordination. She had no prior written warnings. In addition, the Employer failed to produce any firsthand witness to the incident to corroborate the Employer's testimony. For this reason, I would attribute more weight to the Claimant's version of events. As such, I would conclude that the Employer has failed to satisfy their burden of proof. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

Lastly, the Board would note that there was no video offered and accepted into evidence as part of the record before the administrative law judge. At this point, the Board has no authority to compel its production.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson