

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

LOIS A DENLINGER

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 12B-UI-00167

**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 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. The Employer provided credible testimony that the Claimant admitted her wrongdoing during the 'first hearing' (Fact-finding Interview). (Tr. 5) The Claimant signed the employee handbook in acknowledgement of receipt of the Employer's policy with regard to Catalina coupons. (Exhibit 2, unnumbered pp. 1-2) In addition, the fact that she took the coupons to another store location is probative that she knew her behavior questionable. Lastly, I find there was no unreasonable delay in the Employer's decision to terminate the Claimant based on the safety and security team's need to investigate the matter in accordance with corporate policy. For these reasons, I would conclude that the Employer satisfied their burden of proof and would deny benefits.

Monique F. Kuester

AMG/fnv