

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

KATLYN N CLINGAN

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 11B-UI-05270

**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: 96.5-2A

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

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's boyfriend found a Coinstar slip on the ground at 2:00-2:30 a.m. The Claimant identified the slip and knew it had not been cashed. The Claimant's boyfriend cashed the slip the next day. The slip had been lost by another cashier who did not properly process the slip.

The Claimant had no idea that the slip was the property of the store since it was blowing in the wind in the early morning hours. The Claimant did not find or redeem the slip; rather, her boyfriend did. The Claimant did not steal the slip. The Claimant used poor judgment in not reporting the found slip to the store, as she believed the incident was akin to her boyfriend's 'winning the lottery.' (Tr. 9) 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).

At worst, I would conclude that this was an act of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv