

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

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**TAMMY L SALMON**

Claimant

and

**CNH AMERICA LLC**

Employer

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**HEARING NUMBER: 16B-UI-07181**

**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, 24.32-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, 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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Kim D. Schmett

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Ashley R. Koopmans

**DISSENTING OPINION OF JAMES M. STROHMAN:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. I would find that the majority of the Claimant's last absences were due to her own illness, the last of which occurred on November 17 & 18 of 2015; and February 8 & 9 of 2016. She had no illness-related absences until June, which caused her termination. I would note that exceeding the allotted number of points in a no-fault attendance policy is not dispositive of misconduct. The court in Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. See also, Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007) wherein the court held an absence can be excused for purposes of unemployment insurance eligibility even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Based on this record, I would conclude that the Claimant's final absence did not rise to the legal definition of misconduct and would allow benefits provided the Claimant is otherwise eligible.

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James M. Strohman

AMG/fnv