

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

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**TOBIN J DICKINSON**

Claimant,

and

**HY-VEE INC**

Employer.

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**HEARING NUMBER: 14B-UI-00263**

**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 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 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**.

The Board notes that the Administrative Law Judge is correct that an Executive Branch administrative agency such as the Department has no ability to exercise the judicial power of contempt, the agency is not without recourse. The rules of the Department provide that “[i]f any person to whom a subpoena is directed refuses to honor the subpoena, the appeals section of the department may apply to the appropriate district court for an order to compel the party to obey the subpoena.” 871 IAC 26.13(9). This provision is specifically authorized by the Iowa Administrative Procedures Act which provides for subpoena power and that “[i]n proceedings for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in cases of willful failure to comply.” Iowa Code §17A.13(1). More specifically the Employment Security Law authorizes subpoenas to be issued for a hearing and provides that “[i]n case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to

obey is found or resides or transacts business, upon application by the department, or any member or duly authorized representative thereof” can order compliance with the subpoena on pain of contempt. Iowa Code §96.11(8); *c.f.* 47 GA ch 102, §11(i). Normally such action would be taken by the Department’s counsel upon referral by the “appeals section of the department.” Here no such action was taken, and the exercise of the Department’s discretion in such a manner seems fully justified by the underlying proceedings, in particular the fact that when the witness did appear the party who subpoenaed him was not prepared to proceed.

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Kim D. Schmett

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Cloyd (Robby) Robinson

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Ashley R. Koopmans

RRA/fnv