



**DISSENTING OPINION OF KIM D. SCHMETT:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. Although the Claimant has a medical condition, the record supports he had good days and bad days at work until his separation. I find it difficult believe he was totally incapable of performing some type of work. The Claimant attempted to find suitable employment, which establishes he was able and available for work, and that he was earnestly and actively seeking work in accordance with unemployment compensation law. I would also note that while the Claimant had applied for SSDI benefits, he had no assurance he would be determined eligible to receive them. He also continued his work search. Based on this record, I would conclude he was eligible for benefits during the time period at issue, and should owe no overpayment.

AMG/fnv

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Kim D. Schmett