

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

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**ROSE M LAGRANGE**

Claimant,

and

**THE UNIVERSITY OF IOWA**

Employer.

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**HEARING NUMBER: 13B-UI-00088**

**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: 96.5-1, 96.3-7**

**DECISION**

**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**.

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Monique F. Kuester

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Cloyd (Robby) Robinson

**DISSENTING OPINION OF JOHN A PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The record establishes that the employer discharged the claimant because she was unable to return to work after her family medical leave (FML) expired. The record also revealed that the claimant's rights under FMLA were violated when the employer refused to allow her to work less than 8 hours per day pursuant to her doctor's restrictions prior to her FML expiring. The employer clearly fired the claimant prior to the claimant's resigning. The claimant wrote a resignation letter after receiving the employer's termination's letter because the claimant did not want to be terminated. The employer testified that the claimant was fired, and I would agree that this separation is a discharge.

Being unable to return to work due to illness or injury, however, is not misconduct. I find the claimant's testimony that she called and left messages with the employer, and that she went to talk to Ms. Meislein who was not in her office to be credible. The employer was well aware that the claimant would not return to work due to health reasons and said so in the portion of their termination letter that was read into the record. Based on this record, I would conclude that the employer failed to satisfy their burden of proving disqualifying misconduct.

In the alternative, if this case is viewed as a voluntary quit, I would find that the employer created detrimental and intolerable working conditions for the claimant when the employer disallowed her to have intermittent FML, which is allowable under the FMLA.

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John A. Peno

AMG/fnv