

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

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**SAMANTHA J EDWARDS**

Claimant,

and

**MERCY HOSPITAL**

Employer.

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**HEARING NUMBER: 10B-UI-06576**

**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: 96.5-2-A**

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The employer 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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John A. Peno

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Elizabeth L. Seiser

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. After careful review, I would find that the claimant intentionally violated a known policy by eating in an area that was prohibited since she admitted knowing and understanding that any food consumed there might be smelled by patients, which could lead to vomiting. The administrative law judge points out that while the claimant was not eating food in a container, I would note that the claimant was still eating out in the open where the pizza smell could have a negative impact on the patients. Furthermore, I would question the claimant's intention when she testified that "...no one goes behind that wall...besides [her and her mother]" (Tr. 25). Her apparent stealthy behavior implies that the claimant knew her actions were inappropriate and against company policy, thus, a clear violation.

In light of the claimant's receipt of the handbook, and her prior warnings, I would conclude that her choice to consume food in a nondesignated area, particularly where patients could be affected, was a continued disregard for the employer's interests. Her history of failure to follow the employer's directives can only be characterized as misconduct by its legal definition. Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Benefits should be denied.

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Monique F. Kuester

AMG/fnv