

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

LORI L TROXEL

Claimant

and

TSI ENTERPRISES INC

Employer

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HEARING NUMBER: 17BUI-01987

**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 ALLOWED IF OTHERWISE ELIGIBLE

The Employer 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. With the following modification, 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** with the following **MODIFICATION**:

The Board strikes the second and third paragraphs of page 5 of the Administrative Law Judge's decision.

The Board considers the hearsay offered in this case to be admissible under the analysis of *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990), but that case does not govern our weighing of the evidence. In weighing the evidence we concur with the Administrative Law Judge, and in that weighing we take into account the hearsay nature of evidence produced at hearing.

We have struck the discussion of *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976) since that case describes drawing an adverse conclusion about the evidence that was not produced at hearing, and is not merely addressing the weighing of evidence that was produced.

The adverse inference has specific

requirements, not discussed by the Administrative Law Judge, and we do not rely on it in any way in our decision. *E.g. Cataldo v. Employment Appeal Board*, 1999 WL 956509 (Iowa App. 1999). Instead, we merely weigh the evidence that is in the record and concur with the Administrative Law Judge's determination that the Claimant's evidence is more credible.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv