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

LAURA A MESSERSCHMIDT	
Claimant,	: HEARING NUMBER: 09B-UI-05876
and	EMPLOYMENT APPEAL BOARD
BLACK HAWK COUNTY	:

Employer.

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, one member concurring, 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.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

CONCURRING OPINION OF MONIQUE F. KUESTER:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would comment that while the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. <u>Budding v. Iowa Department of Job Service</u>, 337 N.W. 2d 219 (Iowa App. 1983.) I would reiterate that it is the employer who has the burden of proof; and it is clear that the claimant was employed for 27 days and absent for 12 (nearly half of that time). (Tr. 19, line 8) It is also clear that the claimant was excessively absent and a majority of the absences somehow coincided with the weekends. (Tr. 17, lines 7-23)

However, the claimant appears to have properly reported all her illnesses and the final act, which resulted in her termination, was also properly reported. If is for these reasons that I would allow benefits provided she is otherwise eligible.

Monique F. Kuester

AMG/fnv