

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

JESSICA A SPARKS

Claimant,

and

THE EASTER SEAL SOCIETY OF IA INC

Employer.

HEARING NUMBER: 09B-UI-03336

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. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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 Employment Appeal Board would modify the administrative law judge's Findings of Fact to reflect that the claimant was on an 'authorized' leave to be off work from October 8th through the 14th, 2008. Her caseload was 35 for which the normal caseload was 28.

John A. Peno

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. The claimant's start date was 8-6-2006. As a long-term employee, it would appear that she had performed the duties of her job in a satisfactory manner at least until 2008. (Tr. 6, lines 11-12) Based on testimony at the hearing, it was clear that the claimant was aware that completion of her paperwork was critical.

The claimant was on probation due to her backlog issues, which I believe that the employer should not be held accountable for the claimant's inability to keep up with her work that was due to multiple personal issues. The fact that the claimant was behind on her current paper work was a direct result of her need to better manage her time to correct the backlog. If there were no backlog concerns, there would be no need for probation.

As a result of the backlog the claimant was behind on her current work, which led to her discharge. She was absent 7.5 days leaving 38.5 days to complete her work. Based on this record, I would conclude that her failure to complete the tasks was a substantial disregard of the standard of behavior the employer had a right to expect of its employee. I would also conclude that the employer satisfied their burden of proof. Benefits should be denied.

AMG/fnv

Monique F. Kuester