

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

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DAWN M LONG

Claimant,

and

TRINITY REGIONAL MEDICAL CENTER :

Employer.

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**HEARING NUMBER: 10B-UI-19025**

**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, 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. The rationale for the discharge was solely due to attendance in which the claimant used a significant amount of her Personal Time Off (PTO). The claimant testified that her absences were due her and her children's multiple illnesses.

In a traditional attendance system, leave time is divided into specific buckets of time such as vacation, sick leave, and any other leave type as designated by the employer. Under PTO, an employee is not required to give any rationale for the absences. In this instance, the claimant was granted the anticipated leave early in the year provided she had enough accrued time to take. The claimant was repeatedly told to monitor her time by management for which the tally was available on her check stub.

Based on the testimony provided, it is clear that the claimant was well aware that she had attendance issues and was granted the upcoming leave *only* if it was available. (Tr. 3, lines 20-29) As the claimant's requested time approached, the claimant testified that she was aware that she wouldn't have the allotted time. (Tr. 13, lines 24-30) In addition, the claimant failed to do the prudent thing by speaking to management about her alternatives such as the use of unpaid time.

I fail to find the claimant's testimony to be credible that she was unaware that her choice to take leave would jeopardize her job. A reasonable person with any work experience at all would understand that there could be ramifications for taking time that is not available for such use. Furthermore, the claimant's protests at hearing that she was a model employee are weakened by the fact that she had other warnings as well as a suspension for unrelated activities.

I am not insensitive to the claimant's family illness issues. However, the fact remains that under the employer's PTO system, she was aware that the PTO time would not be available and yet, she made the choice to leave anyway. The employer should not be held accountable for the claimant's poor choices. For these reasons, I would deny benefits.

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Monique F. Kuester

A portion of the employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (documents) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

AMG/ss