

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

CAROLYN S ARMSTRONG

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 09B-UI-03016

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 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

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. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

The record establishes that the claimant signed, as well as was aware of the company policy. (Tr. 9, lines 5-12) She testified that she misread the ID because she failed to request that the customer remove the ID from his wallet. The claimant was aware that another sale to a minor would result in her termination. (Tr. 4, lines 29-34) Absent the standard under unemployment compensation law, I would consider a policy violation whether intentional or due to carelessness is still a policy violation. A prudent person could see that the employer would be more than justified to terminate the claim. However, under unemployment compensation law (despite the claimant's acknowledgement of the policy and admission of error), the employer failed to provide substantial evidence to support that the claimant's action was a deliberate intention to disregard the employer's interests. It wasn't clear that the claimant intended to sell the product to the minor. Therefore, I reluctantly agree that benefits should be granted provided the claimant is otherwise eligible.

Monique F. Kuester