

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

ALEXANDER J PRUITT

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 12B-UI-16042

**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. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. John A. Peno would affirm and Monique F. Kuester would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

John A. Peno

CONCURRING OPINION OF JOHN A. PENO:

Although I would affirm the administrative law judge's decision for the reasons stated in that decision, I would also allow benefits on the basis that the Employer's social media policy (Tr. 4) appears to infringe on employees' protected rights under sections 7 and 8 of the NLRA.

John A. Peno

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I find the Employer's testimony, overall, more credible than the Claimant's. While I do not consider a social media posting to be policy violation, I do consider this particular posting as a legitimate threat. This posting was no different than a face-to-face confrontation; here, it was done via cyberspace. Benefits should be denied.

Monique F. Kuester

AMG/fnv