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

SAMANTHA J BENDON	:	
	:	
Claimant,	:	**HEARING NUMBER:** 14B-UI-01942
	:	
and	:	
	:	**EMPLOYMENT APPEAL BOARD**
PINNACLE HEALTH FACILITIES XVII	:	**DECISION**
	:	
Employer.		

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. Cloyd (Robby) Robinson would affirm and Kim D. Schmett 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.

486 IAC 3.3(3) provides:

> *Appeal board decisions.* A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

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Cloyd (Robby) Robinson

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The Claimant had already received a written warning on November 13th for failing to follow proper procedure. I would find that she, again, failed to properly contact the Employer after she refused work. There is nothing in the record to support that the Employer intended to sever their employment relationship based on the 19th absence. The Claimant's rationale for not returning to work at all (because the assistant director of nursing told her "if you can't come to work, don't come back to work again") was not reasonable. The court in *LaGrange v. Iowa Department Job Service*, June 26, 1984, Iowa Court of Appeals Unpublished Case No. 4-209/83-1081 held that an employee who quits based on his mistaken belief that he will be terminated is deemed a voluntary quit without good cause attributable to the employer when the employer has taken no action to sever his employment. Based on this record, I would conclude that the Claimant quit without good cause attributable to the Employer, and should be denied benefits.

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Kim D. Schmett

AMG/fnv