

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

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**LORENA L HENRIQUEZ**

Claimant,

and

**FARMLAND FOODS INC**

Employer.

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**HEARING NUMBER: 11B-UI-11277**

**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 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

AMG/kk

**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 claimant clearly violated the employer's rules and regulations. While I am extremely sympathetic to the plight of the claimant, the employer has a right to expect employees to report to work as scheduled. In light of the fact that the claimant had only worked 11 days (minus orientation) (Tr. 3, lines 21-31) and was still in a probationary status, I find her absences to be excessive. One of her absences was due to personal reasons (bank appointment), rather than reporting to work, which I find inexcusable. (Tr. 5, lines 3-7) Absences for purely personal reasons are unexcused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); see also, Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) Her rationale for not requesting time off ahead of time because there might be negative ramifications was not reasonable. (Tr. 5, lines 30-32)

The employer made a good faith effort to work with the claimant by extending the probationary period, essentially, providing her with a "second chance" to improve her attendance. The administrative law judge even pointed out in her decision that the claimant's attendance was "not good". The final absence, while understandably was due to her child's emergency medical issue, could have been taken care of over the weekend due to the seriousness of the condition. For these reasons, I would find that the employer satisfied their burden of proof. Benefits should be denied.

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Monique F. Kuester

AMG/kk