

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

STEPHANIE A DRYER

Claimant,

and

HEARTLAND HOME CARE INC

Employer.

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HEARING NUMBER: 11B-UI-16850

**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: 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant 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**.

Monique F. Kuester

Elizabeth L. Seiser

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I find the employer's testimony regarding her understanding that the claimant's e-mail meant she would only work the day shift lacked credibility. The claimant's e-mail was merely an inquiry about day shift hours, and not a request to limit her hours to days only. The employer clearly scheduled the claimant to work nights after the e-mail.

The claimant's September 17th e-mail, which indicated that the claimant would no longer work with Tyler, also established that the claimant only requested that two 12-hours shifts be removed from the her schedule. The claimant has not been scheduled since November 2010. (Tr. 16-17) The claimant continues to be able and available for this employer as well as the general workforce.

John A. Peno

AMG/fnv