

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

THERESA WALSH

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 15B-UI-11742

**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: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The majority strikes the final paragraph on page 3 of the Administrative Law Judge's decision as it is clear that a worker does not need a warning not to make a threat to superiors. To the extent that the Administrative Law Judge is discussing a non-threatening comment in the last paragraph of the conclusions of law, this is not inaccurate. We do concur with the Administrative Law Judge in finding that the Claimant's denial of a threat being made was credible.

Ashley R. Koopmans

James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. I find credible the Employer's evidence that the Claimant made a threat towards a superior. Even a single threat is enough to be misconduct, as "[a] threat constitutes a sufficient willful or wanton disregard of an employer's interest and of the standards of behavior which an employer has the right to expect of employees." *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418, 421 (Iowa Ct. App. 1989). I would disqualify.

Kim D. Schmett

RRA/fnv