

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

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**STEPHANIE L LEAF**

Claimant,

and

**CRST VAN EXPEDITED INC**

Employer.

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**HEARING NUMBER: 12B-UI-09315**

**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**.

The Employment Appeal Board would note that other Employers would not have to accommodate the Claimant. However, as to this Employer, the Claimant must be able and available for work during those times when she is not off work due to illness.

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Monique F. Kuester

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Cloyd (Robby) Robinson

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. Testimonial evidence and Exhibit B establish that the Claimant was approved for intermittent family medical leave, which would make her able and available during the time she was on leave with this Employer with the exception of the one week she was off due to pregnancy complications.

29 CFR section 825.203(d) provides:

There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a recued leave schedule. However, an Employer may limit leave increments to the shortest period of time that the Employer's roll system uses to account for absences or use of leave, provided it is one hour or less. For example, an employee might take two hours off for a medical appointment, or might work a recued day of four hours over a period of several weeks while recuperating from an illness. An employee may not be required to take more FMLA leave than necessary to address the circumstance that precipitated the need for the leave, except as provided in sections 825.601. and 825.602.

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John A. Peno

The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

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John A. Peno

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Monique F. Kuester

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Cloyd (Robby) Robinson

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