

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

ANNE M WILSON

Claimant,

and

FLYING J INC

Employer.

:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 10B-UI-19251

**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: 96.5-2A

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**.

Elizabeth L. Seiser

Monique F. Kuester

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. The record establishes that the claimant had a string of tardies a couple weeks prior to her discharge. The employer's witness, Lori Smith, remembers telling the claimant about being late, and that she'd better quit "...because it's not good for everyone else to have to deal with making up the slack..." Tr. 17, lines 28-30) This conversation, however, did not put the claimant on notice that her job was in jeopardy. In fact, the claimant never knew her job was in jeopardy. (Tr. 16, lines 31-33) Ms. Smith believed that the claimant did a pretty good job and tried the best that she could in light of her wrist problem. (Tr. 6, lines 6-8) While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Based on this record, I would conclude that the employer failed to satisfy his burden of proving disqualifying misconduct. I would allow benefits provided she is otherwise eligible.

John A. Peno

AMG/ss