

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

ROSE A NORTHEN

Claimant,

and

SPHERION ATLANTIC ENTERPRISES
LLC

Employer.

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HEARING NUMBER: 09B-UI-09642

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 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

AMG/fnv

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 claimant reported off work due to illness for three days (April 21st, 26th and 27th). According to the employer's testimony, the client for whom she worked made its schedule a week in advance. (Tr. 4, lines 21-23) There is no evidence to support that the claimant would have been scheduled on the days prior to her contacting the employer on May 6th. (Tr. 4, lines 10-14) Even the employer admitted that the claimant was a no call/no show only on April 29th, 2009. (Tr. 3, 4, lines 30-33) For this reason, I would conclude that the claimant's failure to call in on one day was an isolated instance of poor judgment that did not rise to the legal definition of misconduct. Benefits should be allowed provided she is otherwise eligible.

John A. Peno

AMG/fnv