

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

HEATHER A HARTLEY

Claimant

and

OTTUMWA COMM SCHOOL DIST

Employer

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HEARING NUMBER: 17BUI-12642

**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, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board 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 Board strikes the 3rd paragraph on page 4 of the Administrative Law Judge's decision (discussing *Schmitz & Crosser*) and subsequent discussion of or reliance on *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The Board considers the hearsay offered in this case to be admissible under the analysis of *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990), but that case does not govern our weighing of the evidence. In weighing the evidence we concur with the Administrative Law Judge, and in that weighing we take into account the hearsay nature of evidence produced at hearing.

We have struck the discussion of *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976) since that case describes drawing an adverse conclusion about the evidence that was not produced at hearing, and is not merely addressing the weighing of evidence that was produced. The adverse inference has specific requirements, not discussed by the Administrative Law Judge, and we do not rely on it in any way in our decision. *E.g. Cataldo v. Employment Appeal Board*, 1999 WL 956509 (Iowa App. 1999). Instead, we merely weigh the evidence that is in the record and concur with the Administrative Law Judge's determination that the Claimant's evidence is more credible.

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Employer was not presented at hearing. Accordingly none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman