

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

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**HEIDI I BOYD**

Claimant,

and

**HY-VEE INC**

Employer.

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**HEARING NUMBER: 14B-UI-09160**

**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. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Cloyd (Robby) Robinson would affirm and Monique F. Kuester would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law.

486 IAC 3.3(3) provides:

*Appeal board decisions.* A quorum of two members of the appeal board must be present when any decision is made by the appeal board. Should there be only two members present and those two members cannot agree upon the decision, the case shall be issued as a split decision and the decision of the administrative law judge shall be affirmed by operation of law.

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Cloyd (Robby) Robinson

**DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I would find that the Claimant was well aware of company policy regarding the prohibition of profanity in the workplace. Yet, she continued to exhibit very loud and disruptive behavior, which in this particular instance involved her calling supervisor ‘f-ckface’ several times in the presence of other employees and customers. I would find the Claimant’s behavior totally unacceptable as it demonstrates a blatant “...disregard of standards of behavior which the employer has the right to expect of [its] employees...” See, 871 IAC 24.32(1)”a”. Additionally, the fact that this was an isolated instance of her using profanity in the presence of others, it does not detract from the egregiousness of her behavior. The court in *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N. W. 2d 418 (Iowa App. 1989) held that an isolated instance of vulgar language can be disqualifying if it serves to undermine the employer’s authority. Any reasonable person would believe that such behavior without negative consequences is demoralizing in the workplace, and should not be tolerated.

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Monique F. Kuester

AMG/fnv