



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

I agree with my fellow board member that the administrative law judge's decision should be affirmed; however, I would comment that 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.) Clearly, excessive absences were an issue for the claimant. The claimant exceeded the allotted points system and she was aware that additional absences could result in termination. In fact, the claimant was on a final warning.

The employer's testimony was that the schedule was posted in advance so that the claimant was aware that she would be required to work concurrent shifts. The mere fact that the claimant believed this was unfair does not justify her being a 'no show'. With that said, I agree with the administrative law judge's Reasoning and Conclusion of Law that the employer failed to prove misconduct under the statute. It would benefit the employer in the future if they review their points system and institute a rationale and recording procedure to coincide with the points system they have in place. Because the employer was unable to prove that, at least, a substantial amount of the absences were unexcused, and in no way related to a medical situation, I would allow benefits provided the claimant is otherwise eligible.

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Monique F. Kuester

AMG/fnv