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

SANDRA S STEELE	
	HEARING NUMBER: 09B-UI-12484
Claimant,	:
	:
and	: EMPLOYMENT APPEAL BOARD
	: DECISION
SYNOVATE INC	:

Employer.

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. The Appeal Board, one member concurring, 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.

John A. Peno

AMG/fnv

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.

Monique F. Kuester

AMG/fnv