

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

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THOMAS P RYAN

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBER: 09B-UI-02649

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. 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**.

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John A. Peno

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Elizabeth L. Seiser

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

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I would find the claimant's testimony not credible. Initially, he denied knowing that his job was in jeopardy, but then admits that he applied "... more diligence, slow[ed] down..." in acknowledgment that the employer had concerns about his performance. (Tr. 29, lines 1-13) By October 16th, the claimant had committed 26 pharmaceutical errors. The claimant failed to perform all the necessary procedural checks, which contributed to his errors. Normally, the state board inspector visited every two years for an inspection; however, as to the LeMars store, the inspector made two visits in one day because of the claimant's errors. (Tr. 19, lines 30-34) The pharmacy's error rate improved once the claimant was discharged.

Based on this record, I would conclude that the employer satisfied their burden of proof. The repetition of errors on the part of the claimant clearly demonstrated "... carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer..." As such, his behavior was misconduct by its legal definition. For this reason, I would deny benefits.

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Monique F. Kuester