

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

SHANE L ECKHOLM

Claimant,

and

HY-VEE INC

Employer.

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HEARING NUMBERS: 11B-UI-14920 & 14921

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

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: 96.4-3

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board 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**.

Monique F. Kuester

AMG/fnv

SEPARATE CONCURRING OPINION OF JOHN A. PENO:

I agree with my fellow board member that the administrative law judge's decision should be affirmed. However, I would also note that the claimant testified that he last saw the doctor on August 23rd and that the doctor told him that he should be off work until December 31, 2010. (Tr. 21, lines 26-27) After the

claimant was terminated on September 11th, the claimant called the employer on or about September 27th and told the employer he could return to work, but not on night stock. This contradicts the claimant's prior testimony that his doctor excused him from work until December 31st. The claimant failed to present either doctors' excuses at the hearing.

John A. Peno

AMG/fnv