

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

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**LYNN M FOLKERS**

Claimant,

and

**RADA MFG CO**

Employer.

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**HEARING NUMBER: 11B-UI-10298**

**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 DENIED**

The Claimant 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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Monique F. Kuester

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Elizabeth L. Seiser

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I find that the claimant's Exhibit A warrants deeper consideration. It is evident that the claimant's "...thyroid stimulating hormone levels were impressively elevated..." (Exhibit A), which could have conceivably produced side effects, i.e., memory loss, that negatively impacted the claimant's ability to perform her job that day. The claimant did not normally operate this machine. She was observed not wearing her safety harness more than one time during her shift. The claimant was aware of the safety harness requirement and the possibility of job loss if she didn't use it. She did not fabricate her thyroid problem and I cannot discount the possibility that her failure to wear the harness was the direct result of her inability or incapacity due to her thyroid condition. The court in Richers v. Iowa Department of Job Service, 479 N.W.2d 308 (Iowa 1991) held that inability or incapacity to perform well is not volitional and thus, cannot be deemed misconduct.

Safety is a major concern in the workplace and I understand the employer's position. However, I find the claimant's behavior was not intentional. 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). Based on this record, I would conclude that the employer failed to establish their burden of proof. The claimant should be allowed benefits provided she is otherwise eligible.

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John A. Peno

AMG/kjo