

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

ANISSA M FITZPATRICK

Claimant

and

THE UNIVERSTIY OF IOWA

Employer

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HEARING NUMBER: 17BUI-01982

**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, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law to reflect that the Employer did, in fact, appear at the Fact-finding Interview as noted on the Fact-finding notes contained in the file. The Employer, however, admitted having no knowledge of the details of the separation, nor did she "...[submit] detailed factual

information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer..." as required by the administrative rule (871 IAC 24.10).

Ashley R. Koopmans

James M. Strohman

DISSENTING OPINION OF KIM D. SCHMETT:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. The issue in this matter is whether the Employer participated in the initial Fact-finding telephone interview on February 15th, 2017. When the Employer is available to present live testimony at the Fact-finding Interview, it has fulfilled its duties to qualify as a participant.

The Employer physically participated in the initial determination to award unemployment compensation benefits by registering to participate and calling the appropriate telephone number for the interview at 11:13 a.m. on the date designated by Iowa Workforce Development.

The Employer's efforts are acknowledged by Workforce Development on its Fact-finding Worksheet for Misconduct. Their document also acknowledges the Employer provided basic information that the Claimant was terminated by the Employer for an act of misconduct and this occurred on 10-19-2016. The Employer's actual presence at the Fact-finding Interview clearly establishes its participation in the appeal process.

Kim D. Schmett

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Employer was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv