

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

AMY B BRADLEY

Claimant,

and

APPLEBEES NEIGHBORHOOD GRILL

Employer.

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HEARING NUMBER: 11B-UI-17842

**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**.

John A. Peno

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 that the claimant finally admitted that she took the tips that were intended for her co-worker. It is irrelevant that it was only 30 cents; what is relevant is that the claimant knowingly and intentionally took money that she did not belong to her, which was not only theft in the workplace, but a violation of Company Policy 22.29.8 as well. (Tr. 8) I agree with the administrative law judge when she pointed out that the employer should have come to the hearing better prepared (relevant evidence – dates, witnesses with firsthand knowledge, etc.). However, I would reiterate that theft is theft and unacceptable by any standard. I would conclude that the claimant committed disqualifying misconduct when she deliberately removed the tip money and purposely chose to lie to her co-worker and management. I do not discount any alleged disabilities that the claimant possesses; however, I do not believe that her behavior was a by-product of her alleged disabilities as she would have us believe. For these reasons, I would deny benefits.

Monique F. Kuester

A portion of the employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser