

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

LAURA J SARAZIN

Claimant,

and

**BOSTON WINDOW CLEANING
INC/MILLARD GRP**

Employer.

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HEARING NUMBER: 13B-UI-06192

**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: 96.5-1

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**.

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant had kept her supervisor informed of her condition indicating on the 15th, the day she was released to return to work, that she needed to obtain a referral because of the pain she experienced. The Employer offered her FML, which the Employer needed her to complete the necessary paperwork within 15 days. The Claimant was unable to comply, as the doctor couldn't complete the documentation until April 23, 2013.

I agree with the administrative law judge that the Claimant became confused when being asked questions. The Claimant testified multiple times that she was communicating with her supervisor about her health condition. She did not understand that she needed to call in within three days after she informed her supervisor that she was still in pain. She believed in good faith that she didn't have to return on the 15th based on her supervisor's directive that she do what she needed to do to take care of herself.

The Employer failed to participate in the hearing to refute any of the Claimant's testimony. I would attribute more weight to the Claimant's version of events. Based on this record, I would allow benefits provided the Claimant is otherwise eligible. In addition, I would remand this matter to the Iowa Workforce Development Center, Claims Section, for a determination of the able and available issue.

John A. Peno

A portion of the Claimant'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

Cloyd (Robby) Robinson