

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

TONY W BARRERAS

Claimant,

and

WAL-MART STORES, INC

Employer.

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HEARING NUMBER: 12B-UI-10741

**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. 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. I would find that the Claimant was not on an agreed to leave of absence. Instead, he was forced off work due to a 40-lb weight restriction that the Employer did not have to accommodate. Once he was released on August 30, 2012, his weight restriction increased to 50-lbs. There was no testimony on the Claimant's qualifications for work in general workforce. The 40-lb weight restriction would allow the Claimant to work in numerous jobs in the general workforce. Contrary to the administrative law judge's finding, the record established that the Claimant's leave of absence ended on August 30, 2012. Yet, the Claimant was not returned to work until September 10, 2012. For this reason, I would conclude that the Claimant should be allowed benefits for the time period at issue, and previous overpayment assessed, should be removed.

John A. Peno

AMG/fnv