

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

KRISTIN K HODEN

Claimant,

and

BURGER KING CORPORATION

Employer.

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HEARING NUMBER: 12B-UI-16605

**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 claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

Monique F. Kuester

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. The claimant had a prior warning. The final act involved the claimant leaving \$600 cash in a bag under the counter on November 23, 2011, which the employer became aware of that same day. There is nothing in the record to show that the claimant was placed on notice that her job was in jeopardy. Nothing in the record to support that the claimant was suspended pending further investigation of the matter. The employer finally terminated the claimant 8 days later. Based on this record, I would conclude that the claimant was terminated for an act that was not current within the meaning of the law. See, 871 IAC 24.871 IAC 24.32(8), which provides:

Past acts of misconduct. While past acts and warning can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

For this reason, I would allow benefits provided the claimant is otherwise eligible.

John A. Peno

AMG/KK