

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

JASON L WAMBERG

Claimant,

and

WELLS DAIRY INC

Employer.

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HEARING NUMBER: 08B-UI-05572

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: 96.5(2)a

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**.

Elizabeth L. Seiser

Monique F. Kuester

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant was discharged for failing to punch out while eating his lunch; even though the record establishes that he was already punched out when the lead person asked him to perform additional work prior to going to lunch. The claimant performed the requested task (anyway) while off the clock in order to keep production flowing. He then punched in and proceeded to eat his lunch in an attempt to rectify the time differential.

Perhaps, the claimant should have gotten prior authorization from his supervisor to take such a measure. His course of action (change of lunch schedule) was done to facilitate ongoing production, and not intended to defraud or cause harm to the employer. Rather, the claimant was looking out for the best interests of the employer. Although the claimant had attendance and performance issues, I would conclude that this final act, at worst, was an isolated instance of poor judgment that did not rise to the legal definition of misconduct. Benefits should be allowed provided he is otherwise eligible.

John A. Peno