

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

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DEIDRE M PARIS

Claimant,

and

WELLS FARGO BANK

Employer.

HEARING NUMBER: 09B-UI-10843

EMPLOYMENT APPEAL BOARD  
DECISION

**SECTION:** 10A.601 Employment Appeal Board Review

**FINDINGS OF FACT:**

A hearing in the above matter was held August 13, 2009. The administrative law judge's decision was issued August 13, 2009, which determined that the claimant was discharged for disqualifying misconduct that occurred on May 21<sup>st</sup> and May 27<sup>th</sup>. The employer terminated the claimant on June 9, 2009. The administrative law judge's decision has been appealed to the Employment Appeal Board. The record of the hearing before the administrative law judge contains no evidence as to why there was such a delay between the violation and the date of termination.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The record establishes that the claimant was terminated nearly three weeks after the company policy violation. The court in Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharge constituted a "current act," the date on which the conduct came to the employer's attention and the date on which the employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to

determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis.

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There is no evidence to explain when the employer actually learned of the claimant's violation, informed the claimant of the investigation and why there was such a delay in the employer's taking action. As the Iowa Court of Appeals noted in Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Since the record is incomplete, the Board is remanding this record for the taking of additional evidence.

#### **DECISION:**

The decision of the administrative law judge dated August 13, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

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John A. Peno

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Elizabeth L. Seiser

AMG/ss

#### **DISSENTING OPINION OF MONIQUE F. KUESTER:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/ss