

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

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SHIRLEY K DORRIAN

Claimant,

and

WAL-MART STORES INC

Employer.

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HEARING NUMBER: 08B-UI-10629

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. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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**.

The Employment Appeal Board would correct the administrative law judge's Statement of the Case by indicating that the claimant did participate in the hearing.

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Elizabeth L. Seiser

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RRA/fnv

Mary Ann Spicer

**DISSENTING OPINION OF JOHN A. PENO:**

While I concur in the correction of the statement of the case, on the merits I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would reverse the decision of the administrative law judge. The law limits disqualification to current acts of misconduct. "The termination of employment must be based on a current act." 871 IAC 24.32(8); accord Ray v. Iowa Dept. of Job Service, 398 N.W2d 191, 194 (Iowa App. 1986); Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988); Myers v. IDJS, 373 N.W.2d 509, 510 (Iowa App. 1985). The Employer became aware of the final tardy by the Claimant on October 10, 2007. The Employer, however, took no action against the Claimant until October 20. The termination, therefore, was not for a current act of misconduct and I would, for that reason, award benefits.

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John A. Peno

RRA/fnv