

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

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**VICKI S BOUGHTON**

Claimant,

and

**WALMART STORES INC**

Employer.

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**HEARING NUMBER: 10B-UI-07488**

**EMPLOYMENT APPEAL BOARD  
DECISION**

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

**D E C I S I O N**

**FINDINGS OF FACT:**

A hearing in the above matter was held July 12, 2010 in which the issue to be determined was whether the claimant was discharged for misconduct, or whether the claimant voluntarily left for good cause attributable to the employer; and whether the claimant was overpaid. The administrative law judge's decision was issued July 12, 2010, which determined that the claimant was not discharged for an act of misconduct.

At the hearing, the employer testified that she had little information regarding the incident that led to the claimant's termination. (Tr. 2, lines 17-26). She submitted exhibits regarding the employer's policy, the claimant's infraction, as well as other documents. The administrative law judge's decision did not address the timing between the act and the employer's decision to terminate the claimant. The administrative law judge's decision has been appealed to the Employment Appeal Board.

**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.

Although the employer testified and provided documentary evidence regarding the claimant's final act and date of termination, there was nothing in the record to establish when the employer discovered the infraction in relation to the action taken. 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 discharged 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.

At first glance, the claimant's action does not appear to be a current act upon which to base the employer's termination. Additionally, there is nothing in the record to indicate that the claimant knew her job was in jeopardy, i.e., when was she on a decision-making day and when was she placed on suspension?

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. Since we do not know the answers to the aforementioned questions, the Board must remand this matter for further consideration.

**DECISION:**

The decision of the administrative law judge dated July 12, 2010 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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Elizabeth L. Seiser

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Monique F. Kuester

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

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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John A. Peno