

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

GLENN MCMICHAEL

Claimant,

and

MIDAMERICAN ENERGY COMPANY

Employer.

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HEARING NUMBER: 10B-UI-08858

**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, 96.3-7

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**.

Monique F. Kuester

Elizabeth L. Seiser

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 employer documented numerous times the claimant was at home instead of working, returning to the shop, or calling the shop for more work. The employer first became aware of the discrepancies on April 27th. Ms. England waited until May 4th to inform Mr. Lohstreter about the matter and the claimant was allowed to work until May 12th at which time the employer notified the claimant that he was under investigation. While I understand the importance of a thorough investigation, I find the employer had no rational basis *not* to tell the claimant that his job was in jeopardy as soon as the employer learned of the discrepancies on April 27th. 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. Based on this record, I would conclude that the act for which the claimant was terminated was not current within the meaning of the law. Benefit should be allowed provided the claimant is otherwise eligible.

John A. Peno

AMG/kjo