



AMG/fnv

**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 on August 22<sup>nd</sup> for a policy infraction that occurred on August 13<sup>th</sup>. The claimant did not stop the work she was doing to immediately respond to a page to clean the ICU unit. The claimant had received a prior warning. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983).

The record is void of any evidence that the claimant was on notice that her job was in jeopardy for the August 13<sup>th</sup> infraction. The employer waited until August 22<sup>nd</sup> to discharge the claimant, and failed to provide a reasonable explanation for the delay. 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. For this reason, I would conclude that the claimant was discharged for an act that was not current. Benefits should be allowed provided she is otherwise eligible.

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John A. Peno

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