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

| SHERRIE M BURCH | : HEARING NUMBER: 08B-UI-08402 |
|-------------------------------------|-----------------------------------|
| Claimant, | |
| and | EMPLOYMENT APPEAL BOARD |
| GRINNELL REGIONAL MEDICAL CENTER | : |

Employer.

NOTICE

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

DECISION

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.

Elizabeth L. Seiser

Monique F. Kuester

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 22nd for a policy infraction that occurred on August 13th. 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 13th infraction. The employer waited until August 22nd to discharge the claimant, and failed to provide a reasonable explanation for the delay. The court in <u>Greene v. Employment Appeal Board</u>, 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.

John A. Peno

AMG/fnv