

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

LASHANNA T NICKLES

Claimant,

and

WELLS FARGO BANK NA

Employer.

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HEARING NUMBER: 11B-UI-09938

**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 Claimant forwarded an e-mail that was sent to her by a co-worker. The Claimant provided unrefuted testimony that she was the only employee fired because of this action, which I find to be disparate treatment by the employer. The Claimant was not aware that forwarding the e-mail would cause her termination. The fact that the Claimant was sending the e-mail to her supervisor/lead person corroborates that she had no idea her action would put her job in jeopardy. The record is void of any prior discipline. 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). At worst, the Claimant may have used poor judgment; absent any other prior discipline, I would conclude that her behavior did not rise to the legal definition of misconduct such that she should be denied benefits. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv