

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

MARCELO BARRERA

Claimant,

and

BEEF PRODUCTS INC

Employer.

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HEARING NUMBER: 11B-UI-17297

**EMPLOYMENT APPEAL BOARD
DECISION**

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

appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact as follows:

The Claimant was rehired by the employer on April 25, 2006 and worked until November 8, 2010 when he was discharged. (Tr. 12, 18) In 2010, the claimant received progressive discipline as follows:

- February 25, 2010: written warning and suspension for hitting a coworker with a forklift. (Tr. 10)
- June 14, 2010: written warning for not calling and not showing up to work. (Tr. 10)

- June 25, 2010: final written warning and suspension for sneaking up on and scaring another employee. (Tr. 10)
- July 15, 2010: second written warning for excessive unreported absence. (Tr. 9)
- July 25, 2010: “last and final’ written warning for unreported tardiness which stated that “any further violations will result in additional discipline up to and including termination.” (Tr. 8)

All of the preceding warnings were violations of the employer’s general conduct policy which the claimant had signed on April 25, 2006, August 6, 2008, and June 29, 2010. (Tr. 10-11) The claimant also signed all disciplinary notices.

On November 5, 2010, the claimant was tardy by one hour and 15 minutes. His start time that day was 5:00 a.m.; he called someone on the dock at 5:30 a.m. to report that he had overslept and would be late. (Tr. 17-20) This was in violation of the employer’s specific attendance policy requiring tardies to be reported 30 minutes prior to the start of the shift. It also violated the employer’s more general conduct policy embodied in Rule #13 regarding improperly reported absences and tardies. (p. 13-14) After reporting to work late, the claimant worked the balance of his shift on November 5, 2010, a Friday. When he reported to work the following Monday, November 8, 2010, he was discharged. (Tr. 23)

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv