

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

ALYSSA M BEARD

Claimant,

and

NORDSTROM INC

Employer.

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HEARING NUMBER: 11B-UI-10918

**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, 96.3-7

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**.

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. I would find that the claimant was on vacation on June 9th (Rec. @ 7:00) When she returned to work and voiced her concern about the partial approval for her time off, the employer told her that she would look into the problem. The claimant was allowed to work until June 16, 2011, and was discharged, which would render the act for which she was terminated to be a past act, and not current.

871 IAC 24.32(8) provides:

Past acts of misconduct. While past acts and warning can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. The employer’s excuse for the delay that she had to wait for Ms. Huber to return from vacation is not reasonable in light of the fact that there were other managers who could have terminated her closer to the time of the final act. Furthermore, the employer never put the claimant on notice that her job was in jeopardy. For all the foregoing, I would allow benefits provided the claimant is otherwise eligible.

John A. Peno

AMG/lms