

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

JOSE TALAMANTES

Claimant

and

SMITHFIELD FARMLAND CORP

Employer

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HEARING NUMBER: 16B-UI-02475

**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, 96.6-2

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant 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**:

Our only substantive modification to the decision of the Administrative Law Judge is to rule in the alternative. As did the Administrative Law Judge we find that the Claimant did indeed violate the Employer's lock-out/tag-out policy and that he was aware that he was violating it. We find in addition that the Claimant's final lock-out/tag-out violation itself rises to the level of misconduct without the need to enhance the seriousness of the final act by looking to Claimant's history of discipline. We find the final act alone to be an intentional act which was undertaken despite the Claimant knowing that it was in violation of policy. He did wrong, he did it on purpose, and he knew it was wrong.

We are unpersuaded by any argument that the Claimant was only trying to help the Employer. An employee best benefits the employer by following directions. The point of instructions is that an employer's judgment of what is the "right thing" should govern. Often focusing on a single aspect of job

performance results in an employee doing something that is patently the “wrong thing.” For example, a nurse may not redistribute unprescribed medications to save money for patients, nor may a police officer intentionally violate the Bill of Rights just because he is motivated by a desire to stop crime, nor can a delivery person speed just because he wants to get the pizza there while it is warm. Intentional violation of specific instructions cannot be justified by the violator’s second-guessing of that instruction. Here, as we have found, the Claimant was aware that his decision to take the risk to his life was contrary to the Employer’s lock-out/tag-out policy. As a result of this intentional act the Claimant deliberately disregarded standards of behavior which the Employer has the right to expect of employees. To be clear this is an additional alternative analysis, and we continue to concur with the decision of the Administrative Law Judge in all respects.

We have reviewed the Claimant’s argument carefully, as always. While the Claimant complains about alleged procedural flaws, and about alleged discovery failures, we do not perceive from the Claimant a request for a remand. The flaws the Claimant complains about, to the extent that they are capable of being cured, could only be cured through remand. For example, even the Claimant acknowledges that a new hearing would have to have been scheduled in order to impose discovery sanctions on the Employer. This being the case we take it that, although he complains to us about the discovery procedures, the Claimant has waived any objection to the case proceeding despite the alleged flaws. Also the remedy for a due process violation is to provide the process that is due, and this can only be done through a remand – which the Claimant does not request. If we have misapprehended the Claimant’s argument and the Claimant in fact would like us to consider whether a remand is warranted so that discovery can be completed, or so that other alleged procedural flaws can be cured, the Claimant should clarify that he does indeed seek a remand in an application for rehearing.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman