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

BRIAN J ARNOLD	:	
	:	**HEARING NUMBER:** 12B-UI-10235
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
WELLS FARGO BANK NA	:	

Employer.

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: 96.5-2A

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

_____
Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The record establishes that the Claimant clocked in, then went out to move his car. A security guard and the Claimant's supervisor witnessed the incident. The Claimant had numerous prior warnings. The Employer started an investigation on July 12, 2012, but failed to notify the Claimant that his job was in jeopardy, pending the outcome. In the meantime, the Employer allowed the Claimant to work another two weeks (11 days) before terminating him for the mid-July act. I would find that the act was not current as required by Iowa law.

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. (Emphasis added.)*

In addition, 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 did not provide any reasonable justification for the delay. For this reason, I would allow benefits provided the Claimant is otherwise eligible.

_____
John A. Peno

The Claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

_____
John A. Peno

_____
Monique F. Kuester

_____
Cloyd (Robby) Robinson

AMG/fnv