

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

THOMAS R ALLISON

Claimant,

and

WAL-MART STORES INC

Employer.

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HEARING NUMBER: 08B-UI-08688

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

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**.

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv

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 employer discharged the claimant for using his cell phone without prior authorization. He had been allowed to carry the cell phone because his mother was ill. (Tr. 7, lines 21-25) The claimant had already had been previously disciplined for cell phone usage (one-day suspension), which he denied. In the current instance, he did not know he was carrying his phone until the phone rang while he was outside. There was no supervisor available to grant him authorization to accept the call.

The employer failed to provide any corroboration of the prior discipline. Additionally, the employer had no firsthand witnesses to refute the claimant's firsthand testimony, or documentation to support their allegations for which I would attribute more weight to the claimant's version of events in terms of credibility. At worst, his behavior was an isolated instance of poor judgments that did rise to the legal definition of misconduct. Benefit should be allowed provided he is otherwise eligible.

John A. Peno

AMG/fnv