

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

KRISTEN K HARO

Claimant,

and

WELLS FARGO BANK NA

Employer.

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HEARING NUMBER: 12B-UI-12669

**EMPLOYMENT APPEAL BOARD
DECISION**

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: 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

Monique F. Kuester

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. The record establishes that the Employer sponsored an event that involved alcohol consumption in which the Claimant's manager gave her extra drink tickets. Although the Claimant admits that she was intoxicated, her altercation with the co-worker occurred *after* the Claimant and co-workers walked to Mickey's, a local bar. The Claimant had no recollection of the Employer's event due to being intoxicated.

The court in *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416 (Iowa 1992) held that a Claimant commits disqualifying misconduct when he violates the Employer's company policy that prohibits "immoral, illegal or indecent" conduct whether on or off the job. But, I would note that in the instant case, the Employer's policy is silent on nonwork-related behavior. The Claimant was clearly *not* on company time or company property when the incident occurred.

And while the Employer may have compelling business reasons to terminate the Claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). At worst, I would conclude that this was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv