

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

VELENCIA A STEELE

Claimant,

and

WAL-MART STORES INC

Employer.

:
:
:
:
:
:
:
:

HEARING NUMBER: 08B-UI-02272

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: 96.5-2-a

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**.

Elizabeth L. Seiser

Monique F. Kuester

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 claimant was still in probationary status during which time she was absent due to illness on several occasions. The final act occurred when the claimant's niece drank ammonia and she had to rush her to the hospital. The claimant attempted to contact her manager to report off work while at the hospital; however, she did not have access to the employer's appropriate attendance reporting number. Rather, the claimant called the general number and left a message with dispatch for her manger. The claimant's manager did not receive the message.

The claimant had not received any prior warnings or disciplines with regard to her attendance. She did her best to comply with the employer's reporting requirements under the emergency circumstances. 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). Considering the emergency nature of her absence, I would conclude that the final act should have been excused as it did not rise to the legal definition of misconduct. Benefits should be allowed provided she is otherwise eligible.

John A. Peno