

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

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**BRYAN R HECKMAN**

Claimant,

and

**SOUTHWEST IOWA RENEWABLE**

Employer.

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**HEARING NUMBER: 10B-UI-11199**

**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, 871 IAC**

**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**.

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Monique F. Kuester

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Elizabeth L. Seiser

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 testified that he became aware of the falsification of the document on July 5, 2010, and immediately investigated the matter that same evening. Yet, the employer who also testified that the claimant's final act was serious enough to warrant termination on this first offense failed to discharge the claimant until nine days later. The record is void of any other prior disciplines. 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 discharge 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 offered no good reason for the delay; hence, I would conclude that the claimant was discharged for an act that was not current. See, 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.

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John A. Peno

AMG/fnv

The claimant has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not follow the instructions on the notice of hearing. Therefore, good cause has not been established to remand this matter. The remand request is **DENIED**.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

AMG/fnv

