

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

RUDOLPH V HYDE

Claimant,

and

ALPLA INC

Employer.

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HEARING NUMBER: 11B-UI-13539

**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**.

Monique F. Kuester

Elizabeth L. Seiser

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 was aware of the final act the day after the infraction occurred on August 15, 2010. Yet, the employer took no action until 13 days later by suspending the claimant. The employer then took additional time to terminate the claimant (September 2, 2010) I would find that the employer terminated the claimant for an act that wasn't current. 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.

I would also find that there was nothing in this record to justify the 13-day delay that the claimant had no idea that his job was in jeopardy. 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). The employer failed to establish a reasonable basis for the delay. For this reason, I would conclude that the employer failed to satisfy his burden of proof and allow benefits provided he is otherwise eligible.

John A. Peno

AMG/fnv