

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

PHAYBOUN LOVANH

Claimant,

and

TITAN TIRE CORPORATION

Employer.

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HEARING NUMBER: 15B-UI-12776

**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. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, 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** with the following **MODIFICATION**:

Misconduct that occurs during a Claimant's layoff is still disqualifying.

Kim D. Schmett

Ashley R. Koopmans

DISSENTING OPINION OF JAMES M. STROHMAN:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I would find that the Claimant made a good faith attempt to renew his I-9 work permit on August 25, 2014. In the meantime, his immigration status was still valid when he was laid off due to a reduction in workforce on November 7, 2014. When his permit expired on November 12th, his renewal application was still pending. There was no guarantee that had he filed 10 days earlier, his permit would have been renewed on time. See, *Marzetti Frozen Pasta, Inc. v. Employment Appeal Board*, October 29, 2008, Court of Appeals Unpublished Case No. 8-627/08-0288 wherein the court agreed with the agency's ruling that the Claimant there could not be held accountable for delays caused by government procedures, and thus, Bermudez' failure to procure a renewed authorization card was not volitional. I would agree that same holds true in this case. For this reason, I would conclude that 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); see also, *Breithaupt v. Employment Appeal Board*, 453 N. W. 2d 532, 535 (Iowa App. 1990). At worst, I would consider his not filing sooner to be an isolated instance of poor judgment that didn't rise to the legal definition of misconduct.

James M. Strohman

AMG/fnv