



**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 Employer's Exhibit clearly establishes that the Claimant was suspended for eating on the production floor. At the hearing, however, the Employer testified that the Claimant was suspended for possessing food in an open wrapper on the production floor.

There is nothing in the record to corroborate the Employer's testimony that food being eaten on the floor is a policy violation. I find the Claimant's testimony credible that the Employer has passed out candy and popsicles to employees on the production floor in the past. I would attribute more weight to the Claimant's firsthand testimony that he was not eating on the production floor. Furthermore, I would find that the Employer has not only failed to prove that the Claimant was eating, but failed to establish a work rule prohibiting such behavior and that such a rule was uniformly enforced. Based on this record, I would conclude that benefits should be allowed provided the Claimant is otherwise eligible.

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John A. Peno

AMG/fnv