BEFORE THE EMPLOYMENT APPEAL BOARD

Lucas State Office Building Fourth floor Des Moines, Iowa 50319

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LARRY COLLINS

HEARING NUMBER: 13B-UI-05407

Claimant,

.

and

EMPLOYMENT APPEAL BOARD

DECISION

ADVANCED COMPONENT

Employer.

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: 96.5-2A, 24.32-9

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	
Cl. 1 (P. 11) P. 1:	
Cloyd (Robby) Robins	son

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.

John A. Peno

AMG/fnv