

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

JULIE L ROHLOFF

Claimant,

and

CASEY'S MARKETING COMPANY

Employer.

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HEARING NUMBER: 12B-UI-04172

**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

Cloyd (Robby) Robinson

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 argued that the Claimant hung up on her supervisor on March 5th when she called in to report that she would be tardy due to a death in the family. The Claimant testified that she was discharged over the phone the following day. The Employer, however, failed to provide a firsthand witness to corroborate their allegation.

The record establishes that the Claimant was not fired for attendance issues. Rather, she was fired because of the phone conversation she had with her supervisor on the 5th. The Claimant provided firsthand testimony that her supervisor was sarcastic and trying to ‘goad’ her into quitting. The Claimant informed her supervisor that she was not quitting and hung up. The Employer failed to provide the Claimant’s supervisor as a witness at the hearing to refute any of her testimony. According to Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976), where, without satisfactory explanation, relevant evidence within control of party whose interests would naturally call for its production is not produced, it may be inferred that evidence would be unfavorable. For the above reasons, I would attribute more weight to the Claimant’s version of events.

The supervisor’s behavior during that March 5th call precipitated the Claimant’s disconnection of the call. While I do not condone such behavior, I would conclude that, at worst, it was an isolated instance of poor judgment particularly given the extenuating circumstances. In addition, when considering the Employer’s own progressive disciplinary records, the Claimant was not at the point where she would be subject to termination. For all the foregoing reasons, I would conclude that the Employer failed to satisfy their burden of proof. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv