

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 Claimant testified that according to the employer's point system attendance policy, an accumulation of 14 points results in automatic termination. The Claimant accumulated only 7 points as a result of a few absences due to illness and two prior tardies. The final act involved tardiness due to oversleeping because his electric alarm clock didn't sound off due to a storm that knocked out his electricity. The employer failed to participate in the hearing and therefore provided no evidence to refute the Claimant's firsthand testimony. For this reason, I would attribute more weight to the Claimant's testimony that he had only 7 points, which shouldn't have caused his termination. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv