

AMG/fnv

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 discharged the claimant even though the claimant had not been convicted. The employer cited ethics as the reason for the termination based on the employer's Internet findings.

The record reveals that the claimant satisfied her six month probationary period on a prior plea agreement to a deferred prosecution for which the allegation was dismissed in June of 2008. The claimant had pled not guilty to the current charges, which had not yet been resolved. I would conclude that to discharge the claimant for the act of pleading 'not guilty' to a criminal charge not yet resolved does not rise to the legal definition of misconduct. For this reason, I would allow benefits provided she is otherwise eligible.

John A. Peno

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A portion of the claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (documents) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

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