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

BRIAN J HALLBERG	· · · · · · · · · · · · · · · · · · ·
Claimant,	: HEARING NUMBER: 07B-UI-08738
and	: EMPLOYMENT APPEAL BOARD : DECISION
ACCESS DIRECT TELEMARKETING INC	
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(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.

Elizabeth L. Seiser	
Mary Ann Spicer	
may / min oproor	

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 claimant was discharged for disconnecting a customer during conversation, which was considering 'flashing.' The employer failed to present firsthand testimony or any other evidence to prove that the claimant did, in fact, 'flash' a customer to unhook their conversation in light of the claimant's denial. The claimant believes he had equipment problems for which he verbally notified his supervisor each time a call was unhooked. Although the employer warned him about using his flash button in the past, it should be noted that both the claimant and other employees had sometimes used this method at their supervisor's request to increase their on-line time. For these reasons, I would conclude that the employer failed to prove by a preponderance of evidence that the claimant committed job-disqualifying misconduct.

John A. Peno

AMG/fnv