

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