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

BRETT ARNOLD	• • •	
Claimant,	:	HEARING NUMBER: 12B-UI-15999
and	:	EMPLOYMENT APPEAL BOARD
SEARS ROEBUCK & CO	•	DECISION

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 Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

Monique F. Kuester

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#### **DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer's managers were asked to bring in a grotesque dish as a Halloween gag. The claimant did just what the employer directed him to do. The claimant probably went overboard with his dish; however, I would find that the employer 'opened the door' for such a possibility given the nature of the event. The record establishes that the claimant removed the item prior to being directed to do so. (Tr. 9, lines 32-34) The record is void of any other discipline. At worst, the claimant exhibited an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided the claimant is otherwise eligible.

John A. Peno

AMG/kk