

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

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**PAMELA K TOMPKINS**

Claimant,

and

**CASEY'S MARKETING COMPANY**

Employer.

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**HEARING NUMBER: 10B-UI-00734**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**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**

**D E C I S I O N**

**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**.

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Monique F. Kuester

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Elizabeth L. Seiser

**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 The claimant was terminated for taking outdated soup home to her dog. The employer held a meeting notifying employees of the employer's purchase policy.

The claimant testified that the product was in the dumpster, which she removed and placed in her car. The soup, if good for human consumption, was worth \$10.00. This situation is distinguishable from that of 'day-old donuts', which the employer could still sell. The claimant had no prior disciplinary issues. At worst, I would find this to be an isolated instance of poor judgment that did not rise to the legal definition of misconduct. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). I would allow benefits provided the claimant is otherwise eligible.

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John A. Peno

AMG/ss