

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 parties provided conflicting testimony; the employer testified that the claimant quit while the claimant argues that the general manager, Scott Metzger became upset and directed the claimant to “get the f-ck out!” The only testimony that is somewhat corroborative of the claimant’s version of events is Metzger’s testimony regarding the incident at the time clock. Metzger admits that he purposely stepped in front of the claimant as the claimant was trying to exit the facility. While Mr. Metzger does not, specifically, deny telling the claimant to “get the “f-ck out,” he indicates that he does not recall the statement. This is a close call considering the fact that neither party produced any firsthand witness to the incident. However, in light of Metzger’s admission to stepping in the claimant’s path, I would find the claimant’s testimony more credible and conclude that the claimant had a reasonable belief that he had been terminated. For this reason, I would allow benefits provided the claimant is otherwise eligible.

John A. Peno

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 (document) 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

AMG/ss