



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 failing to tag down a product line. When the claimant arrived in the area, he initially asked Francisco to shut down the line, but Francisco refused. The claimant informed Elmer Pineda, the lead person, who agreed, but did not shut down the line. (Tr. 14, lines 19-34) The claimant understood that only people having authority to shut down an area were either a lead person or supervisor. For safety reasons, the claimant could not tag an area until machines were shut down. The record clearly establishes that the claimant made a good faith attempt to secure the area, but he received no cooperation. While his failure to report the matter until after lunchtime may have been poor judgment, his action did not rise to the legal definition of misconduct. Thus, I would conclude that the employer failed to satisfy its burden of proving disqualifying misconduct.

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John A. Peno

AMG/fnv