



**DISSENTING OPINION OF KIM D. SCHMETT:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the administrative law judge's decision. While I do not condone the Claimant's unconventional method of contacting a business customer through use of company records for personal reasons, I would find that the customer's overreaction was due more to her unique circumstances than the Claimant's actual behavior. After the Claimant received the customer's response, he did not continue to inappropriately pursue this matter. In light of this situation, I would conclude that this was an isolated instance of poor judgement that didn't rise to the legal definition of misconduct and would allow benefits provided the Claimant is otherwise eligible.

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Kim D. Schmett

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Employer was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

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Kim D. Schmett

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Ashley R. Koopmans

AMG/fnv

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James M. Strohman