



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. Mr. Shoep testified that the claimant told him to "f-ck off!" The claimant testified that Mr. Schoep was berating her, telling her that she was incompetent, useless and worthless. (Tr. 13, lines 19-24) The claimant admits that she hung up on him, but denied using any profanity. The employer did not refute the claimant's testimony. The employer failed to prove by a preponderance of evidence that the final act was disqualifying misconduct. Benefits should be allowed provided the claimant is otherwise eligible.

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John A. Peno

AMG/fnv