

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

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**MICHAEL G SIMPSON**

Claimant

and

**CASEY'S MARKETING COMPANY**

Employer

**HEARING NUMBER: 17BUI-05652**

**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 ALLOWED IF OTHERWISE ELIGIBLE**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, 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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Ashley R. Koopmans

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James M. Strohman

**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. I would find the Claimant was clearly involved in inappropriate activities, including both touching and kissing his supervisor, at the workplace while being paid to work for the Employer. This is substantiated by video evidence submitted by the Employer and acknowledged by the Claimant. The Claimant's activities are also contrary to the Employer's work rules that prohibit fraternization between an employee and a supervisor, and far exceed the standard necessary to rise to the level of misconduct that would disqualify an employee. Based on this record, I would conclude that the Employer has satisfied its burden of proof. For this reason, I would deny benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

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Kim D. Schmett

AMG/ss