



**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer's managers were asked to bring in a grotesque dish as a Halloween gag. The claimant did just what the employer directed him to do. The claimant probably went overboard with his dish; however, I would find that the employer 'opened the door' for such a possibility given the nature of the event. The record establishes that the claimant removed the item prior to being directed to do so. (Tr. 9, lines 32-34) The record is void of any other discipline. At worst, the claimant exhibited an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided the claimant is otherwise eligible.

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John A. Peno

AMG/kk