

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 Claimant was terminated for insubordination when she, initially, refused to tie her hair back in accordance with company policy. The Claimant received a prior warning, at which time the record shows that her job was not in jeopardy. She reasonably believed that the Employer was not treating all employees the same concerning the 'tie back' hair policy. Her belief that she was being 'singled out' stems from the fact that the supervisor, Vera, was not required to tie her hair back, which the Claimant believed was longer than hers. Although the Claimant argued with Ms. Paisley, she complied with her request. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). At worst, I would find that the Claimant may have used poor judgment in handling what she believed was unfair treatment. However, I would not conclude that her behavior rose to the legal definition of misconduct. Benefits should be allowed provided the Claimant is otherwise eligible.

John A. Peno

AMG/fnv