

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. The supervisor gave the claimant a direct order not to call the claimant's parents about a trip cancellation. The claimant called the parents because the claimant knew that the patient would not handle the trip cancellation well and she wanted the parents to know about the situation. There was no evidence of any prior disciplinary actions against the claimant. For this reason, I would conclude that this was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided she is otherwise eligible.

John A. Peno

AMG/ss

A portion of the claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (document) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/ss