

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. The claimant was discharged because a customer allegedly sent an e-mail complaint to the corporate office. The claimant had a prior three-day suspension for calling an employee back to her store after the manager had "lent out" the employee because other store was short-staffed. The employer also alleges that the claimant had other warnings for poor customer service; however, the employer failed to provide any documentation (verbal or written warning) or dates to substantiate the employer's allegations at the hearing.

The record reflects that the customer asked the claimant how the claimant was doing for which the claimant responded with a long, detailed explanation about problems she was experiencing. There is no evidence to prove that the claimant was rude to the customer. Additionally, the claimant had no recollection about the alleged incident, as well as the employer failed to submit the e-mail complaint at the hearing. (Tr. 4, lines 12) For this reason, I would conclude that the employer failed to satisfy their burden of proving their case. The claimant should be allowed benefits provided she is otherwise eligible.

John A. Penno

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