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

MISTY K HARTZLER	: : : HEARING NUMBER: 07B-UI-09035
Claimant,	:
and	EMPLOYMENT APPEAL BOARD
CASEY'S MARKETING COMPANY	

Employer.

NOTICE

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

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board 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.

Elizabeth L. Seiser

Mary Ann Spicer

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. Peno

AMG/fnv