

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

HAZEL M OHNESORGE

Claimant,

and

GOOD SAMARITAN SOCIETY INC

Employer.

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HEARING NUMBER: 08B-UI-09975

EMPLOYMENT APPEAL BOARD
DECISION

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 ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, 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**.

John A. Peno

RRA/fnv

CONCURRING OPINION OF ELIZABTH L. SEISER:

I write separately to emphasize that I consider this case to turn primarily on issues of credibility and that I find the Claimant to be credible in her testimony. I also note as to the charge nurse that according to Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976), where, without satisfactory explanation, relevant evidence within control of party whose interests would naturally call for its production is not produced, it may be inferred that evidence would be unfavorable.

Elizabeth L. Seiser

RRA/fnv

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority of the Employment Appeal Board. I would reverse the decision of the Administrative Law Judge. Ms. Ohnesorge was a twenty-year CNA who through her own admission stated she struck the patient on the cheek after using an expletive. The claimant also mentioned that the palm slap was hard enough to leave a skin tear on the patient (Testimony page 12 Lines 24-32 and Page 13 Lines 30-31). A reasonable person would ascertain that the skin tear and bruise on the patient's cheek were interconnected since it was noted shortly after the claimant cleaned the patient (Testimony Page 18 Line s6-14). I would strongly disagree with the Reasoning and Conclusion of the Administrative Law Judge in that the employer did put forth credible evidence which proven that the claimant's striking of a patient under her care was deliberate and intentional which would denote misconduct. The strongest evidence was supplied by the claimant who admitted loosing control and hitting the patient hard enough to leave a bruise. What is in question was the force of the hit and how many times the patient was struck. The testimony of the first hand witness was very credible who validated the report of the employer by saying there was two slaps not one. (Testimony Page 6 Lines 3 – 34 and page 7 Lines1-28). Any reasonable person would conclude without a doubt that this is patient abuse especially considering the type of patients that the claimant was responsible for. Thus, I would reverse the decision of the administrative law judge and deny benefits to the claimant.

Mary Ann Spicer

RRA/fnv