

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

LINDA R FLAMMANG

Claimant,

and

CARE INITIATIVES

Employer.

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HEARING NUMBER: 10B-UI-08923

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

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)

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer 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**.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. After careful review, I would find that the claimant committed an act that constituted misconduct. The claimant's neglectful treatment of the resident was a clear breach of the duties and obligations that the employer had a right to expect of its employee. Due to the fact that the claimant was such a long-term employee (21 & 1/2 years) (Tr. 9, line 11), and testimony is clear that she cared for this particular elderly, frail, patient with a history of falling due to her various medical issues, I find it strange that this veteran employee would allow such a resident to fall by failing to hold on to the gait belt while opening the door. Any reasonable person would presume that the claimant had been in this situation hundreds of times and experienced success a majority of the time.

The claimant's testimony that she simply "made a mist ake" (Tr. 21, lines 17) is inexcusable. Due to the serious nature of the incident, it can not be tossed off as an isolated act of poor judgment. The claimant failed to follow procedures even though she had previous training and testified that she was aware that her actions (leaving the resident standing alone without the gait belt) constituted neglect. (Tr. 29, line 32)

Allowing the resident to be injured was egregious in itself, but the claimant's failure to tend to the needs of this crying, distraught, elderly resident simply because she was "scared" (Tr. 22, line 17) was ridiculous in light of her years of experience in being around residents that sometimes fell. (Tr. 22, lines 28-30)

The claimant had a prior warning for failing to be sufficiently attentive to the residents; and coupled with the final act that lead to her termination, I would conclude that the record contains substantial evidence that the employer had met their burden of proof. Benefits should be denied.

Monique K. Kuester

AMG/kjo