

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

---

**MICHELLE A SHEBER**

Claimant,

and

**GOOD NEIGHBOR SOCIETY**

Employer.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 12B-UI-15782**

**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 DENIED**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. Those members are not in agreement. Monique F. Kuester would affirm and John A. Peno would reverse the decision of the administrative law judge.

Since there is not agreement, the decision of the administrative law judge is affirmed by operation of law. The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board and that decision is **AFFIRMED** by operation of law. See, 486 IAC 3.3(3).

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 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.

---

Monique F. Kuester

**DISSENTING OPINION OF JOHN A. PENO:**

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The Claimant was accused of not properly transferring a resident, which the Claimant denies. The Claimant believes the allegations were made because one employee wanted to work the shift that the Claimant was working and that the Employer had been fined by the state, which the Claimant was unable to prove either.

The record is void of any discipline prior to the Claimant's suspension and ultimate discharge. I disagree with the administrative law judge that the Employer had an eyewitness to corroborate the Employer's allegations. The Employer's witness, Heather Riley, acknowledged that the resident was not transferred without shoes or "gripper socks." In fact, Ms. Riley testified that the resident had her shoes and gait belt on when the resident was being transferred, as she was the person who put them on. (Tr. 23, lines 1-4) In addition, Ms. Riley testified that the resident took her own shoes off. (Tr. 22, lines 32-34) I find this testimony makes the Claimant's version of events more probative that she did not violate protocol for transferring this resident. For this reason, I would conclude that the Employer has failed to prove by a preponderance of the evidence that the Claimant committed any disqualifying misconduct. Benefits should be allowed provided the Claimant is otherwise eligible.

---

John A. Peno

AMG/fnv