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

Claimant,	HEARING NUMBER: 08B-UI-00703
and	EMPLOYMENT APPEAL BOARD

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 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.

Elizabeth L. Seiser

John A. Peno

AMG/fnv

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The employer's case was weakened by the claimant's assertion that if the case was one of founded patient abuse, why then would the employer pay for all the legal fees considering the employer made no determination that abuse was founded? It was DIA that rendered the finding. (Tr. 4, lines 3-29)

Furthermore, the claimant's testimony conflicted with that of the employer's testimony that stated there was misconduct. Yet, the administrative law judge failed to draw out the facts. The employer's case was weak due to lack of preparation and firsthand evidence as to what happened. (Tr. 5, lines 18-23) But the misconduct allegation (patient abuse) presented was so egregious that a ruling to the contrary would not be in the employer's best interests as it could present a safety liability for future patients at the facility. Thus, I would reverse the administrative law judge's decision by denying benefits.

Mary Ann Spicer

AMG/fnv