

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

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