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

TAMARA SCHNEPEL	:	
	:	**HEARING NUMBER:** 21B-UI-02643
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
LUTHERAN SERVICES IN IOWA INC	:	
	:	
Employer	:	

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 Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Tamara Schnepel (Claimant) worked for Lutheran Services (Employer) as a full-time family support specialist from December 22, 2019 until she was fired on on August 21, 2020. The stated reason for the discharge was that Claimant violated employer's HIPPA policy.

Claimant was given a copy of employer's rules and policies at the time of hire. Claimant also received HIPPA training from employer.

On August 10, 2020 Claimant was providing services for a client. The area where claimant lives experienced extremely high winds which were later referred to as, "the derecho." This storm caused widespread damage throughout the area. The Claimant drove to her parents' home to see if they were okay after the wind stopped. Claimant had her client with her, and Claimant's parents met her client. This disclosed to her parents the identity of her client, and was a violation of the HIPPA rules. This is the sole cause of the discharge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) provides:

> *Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

> *Misconduct* is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service,* 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The Claimant in this matter is guilty of no more than "good faith errors in judgment" in a single instance. 871 IAC 24.32(1)(a). Such good faith instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Service*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App.1986); 871 IAC 24.32(1)(a). The Claimant was understandably frightened for her elderly parents. She was in an area experiencing a very destructive and widespread weather event. She should have, of course, not taken the client with her to her parents' home. But in her high state of understandable anxiety she made a big mistake and took the client. This was a violation of work rules, and of HIPPAA but the question is whether it is also a **willful and wanton** disregard of the Employer's interests. We note that the Court has recognized that problems linked to mental lapses caused by medical conditions will not constitute misconduct. *C.f. Quenot v. Iowa Department of Job Service*, 339 N.W.2d 624, 627 (Iowa App. 1983); *Roberts v. IDJS*, 356 N.W.2d 218, 222 (Iowa 1984). While this Claimant was not undergoing any medical episode, her understandable emotional disturbance was sufficient that this, rather than a willful decision to disregard the rules, explains her good faith error in judgment.

We do understand that the Employer is being very strict because the confidentiality laws are very strict. Thus the Board appreciates that confidentiality of patient information is very important to health care providers. We also appreciate that governmental regulations are involved. Yet it is common for actions that are not misconduct to nevertheless implicate regulatory or statutory proscriptions. For example, drivers of commercial vehicles have specific requirements on the time and manner of driving imposed on them by law. 49 CFR 383. This does not mean drivers who are engage in ordinary negligence, in violation of the rules of the road, commit misconduct. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000); *Fairfield Toyota, Inc. v. Bruegge*, 449 N.W.2d 395 (Iowa App. 1989). Food service workers must handle food, dress, use the restroom, etc. as prescribed the Food Safety Code. Iowa Code §137F.2 (adopting 1997 food code for all Iowa food establishments). This does not mean a food service worker who forgets to wear a hairnet commits misconduct just because it is a violation of a regulation. Nurses must administer medications according to the licensing standards of their profession and of whatever facility they may be working in. 655 Iowa Admin. Code 4.6 (nursing standards); 481 IAC 58 (skilled nursing facility); 481 IAC 57 (residential care facility); 481 IAC 51.7(hospital). This does not make poor judgment in rendering care, in violation of governing regulations, into misconduct. *Infante v. Iowa Dept. of Job Service*, 364 N.W.2d 262, 265 (Iowa App. 1984). Construction and manufacturing workers are expected to comply with very important OSHA safety regulations yet their violation of those standards does not automatically mean they are disqualified. Servers should not sell beer to a minor, but a busy server who neglects to card a single customer would not necessarily be guilty of misconduct. The Board's point is that many employees may engage in isolated acts of negligence, unsatisfactory conduct, or poor judgment that violates some rule or regulation. This fact alone does not convert a single negligent act, or lapse of judgment, into misconduct. The key is the nature of the conduct alleged to be disqualifying – not just the importance of the policy at issue. In other words, "[m]isconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.* 616 N.W.2d 661, 665 (Iowa 2000); *Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct.App.1995); *Reigelsberger v. Employment Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *Breithaupt v. Employment Appeal Bd.*, 453 N.W.2d 532, 535 (Iowa Ct.App.1990); *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219, 222 (Iowa App. 1983). This case falls squarely within that rule. We understand why the Claimant was discharged but do not find that the Employer has proven this reason sufficient to disqualify the Claimant.

DECISION:

The administrative law judge's decision dated March 15, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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James M. Strohman

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Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

After a thorough review of this claim, I respectfully disagree with the majority decision. It is understandable that the claimant was concerned about her own family members following a massive and destructive storm. However, it is also my opinion that the claimant fully understood and intentionally violated federal HIPAA law which could put herself and her employer in legal jeopardy. Actions of this nature are clearly consistent with the definition of misconduct

Therefore, I would agree with the decision reached by the Administrative Law Judge to deny eligibility for unemployment benefits.

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Myron R. Linn

RRA/fnv