

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

DELOY RAINEY

Claimant,

and

CARE INITIATIVES

Employer.

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HEARING NUMBER: 11B-UI-10660

**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 DENIED

The Claimant 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**.

Monique F. Kuester

Elizabeth L. Seiser

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I am troubled that the claimant did not report to the employer and cooperate in the investigation. However, the employer had already made a decision to terminate the claimant prior to talking to her. (Tr. 5, lines 22-25) The confusion, which resulted a tragic ending, happened at shift change. The claimant admits that the CNA came to the desk to report that a resident seemed more confused than the resident was at checklist. I find the claimant's testimony that the CNA didn't express urgency to be credible.

I agree that 'confused' is a vague term; but I do not find that the claimant had a 'not-my-job' attitude. I find it credible that the claimant believed the nurse coming in for the next shift, who was present when the report was made, would check on the resident. The record does not establish a clear policy of duties at shift change. At worst, I would conclude that the claimant exhibited an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. While the employer may have compelling business reasons to terminate the claimant, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). I would allow benefits provided the claimant is otherwise eligible.

John A. Peno

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.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/lms