

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

JACQUELINE CARPENTER	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-12380
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
COMMUNITY CARE INC	:	DECISION
	:	
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**.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. I find that the claimant removed Protected Health Information (PHI) from the facility clearly violating the employer's policies and procedures. Based on the employer's extensive testimony and their witnesses, I would also find that the claimant received training on the procedures and that the witnesses' testimony is credible.

This case hinged on the claimant's alleged statement made to a co-worker (Judy Tucker) that "she need to take -- she needed to take them home because she couldn't get overtime there to do her work. And she says if it got back to anybody, she'd know where it came from." (Tr. 36, lines 32-34) This is an indicator that the claimant was aware that her actions were inappropriate and could result in some type of punishment. Although this is secondhand testimony, I still find it credible.

While the employer failed to prove that the claimant's actions were a violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations concerning PHI, it is clear to me that whatever information was contained in the binders was the employer's property, which included information that referred to specific residents of the care facility. As such, I would conclude that the employer satisfied their burden of proving disqualifying misconduct for which benefits should be denied.

Monique F. Kuester

AMG/fnv