

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

AMY J COLLINS

Claimant,

and

ALLEN MEMORIAL HOSPITAL

Employer.

HEARING NUMBER: 08B-UI-04956

EMPLOYMENT APPEAL BOARD
DECISION

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 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**.

Elizabeth L. Seiser

Monique F. Kuester

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. The employer terminated the claimant for three reasons: 1) the claimant failed to preauthorize a patient causing a \$65,000 loss to the hospital; 2) the claimant gave the patient the wrong name when the patient made a complaint; and 3) the claimant cited for unauthorized Internet usage.

The employer's testimony and exhibits establish that the employer became aware of the claimant's problems as early as April 11th. Yet, the employer failed to inform the claimant that she was under investigation for possible disciplinary action, which could include termination. The employer was aware of the Internet usage on April 14th and April 18th; however, the employer allowed the claimant to work up until her discharge that occurred at the end of the month (April 30th). The court in Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharge constituted a "current act," the date on which the conduct came to the employer's attention and the date on which the employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis. Here, the employer offered no evidence to explain the delay. For this reason, I would conclude that there was no current act upon which to base the claimant's discharge. Benefits should be allowed provided she is otherwise eligible.

AMG/fnv

John A. Peno

ORDER REGARDING RECORD: The Employment Appeal Board orders that any mention of patients who did not participate in the hearing, found in the transcript is hereby redacted. In general, patients enjoy a privilege for medical records and communications. Iowa Code section 622.10; See Iowa Code section 22.7(2) (medical records of public health provider are not open records). The resident in question did not participate in the hearing and, so far as we can tell, they did not waive any objection to the disclosure of their names. We conclude that redaction of the last names of the patients in this matter is warranted. This redaction does not materially affect the record evidence.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

Monique F. Kuester