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

NORMA J HOWELL	
Claimant,	: HEARING NUMBER: 09B-UI-00956
and	EMPLOYMENT APPEAL BOARD
MASON CITY CLINIC PC	: Decidion

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 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

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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 claimant was an 80-year old female. A patient came to her home after dark asking strange questions. The claimant believed that the patient had been drinking as well as had an adult disorder and could harm her. She admitted her action was inappropriate. The claimant had no intention of divulging the patient's medical information when she accessed it; and there is no evidence that she discussed or relayed the medical information to anyone. The claimant was frightened and made the wrong decision when she did not go to the employer to express her concerns. 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). The claimant had no prior disciplines; thus, I would conclude that this was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. Benefits should be allowed provided she is otherwise eligible.

John A. Peno

AMG/ss