

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