

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RHONDA L PRUISMAN
Claimant

APPEAL NO. 10A-UI-14669-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HERITAGE OF IOWA FALLS INC
Employer

OC: 09/12/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Heritage of Iowa Falls, Inc. (Heritage) filed an appeal from a representative's decision dated October 14, 2010, reference 01, which held that no disqualification would be imposed regarding Rhonda Pruisman's separation from employment. After due notice was issued, a hearing was held by telephone on December 13, 2010. Ms. Pruisman participated personally. The employer participated by Diane Klein, People Development Coordinator; Mikael Loneman, Interim Administrator; and Rachel McCartney, CNA. The employer was represented by John Henson of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Pruisman was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Pruisman was employed by Heritage from September 23, 2009 until September 15, 2010 as a full-time CNA. She was discharged for using profanity in the presence of a resident on September 15. She stated that she had had the same schedule and that there was no "fucking" reason to change it now. The comment was reported by Rachel McCartney, another CNA.

Ms. Pruisman did not have any history of difficulties with Ms. McCartney. Her statement was considered a violation of the employer's mission to treat employees and residents with respect. She had received a verbal warning on August 5, 2010 because of reports that she was rude to residents. The conduct of September 15, 2010 was the sole reason for Ms. Pruisman's discharge.

Ms. Pruisman filed a claim for job insurance benefits effective September 12, 2010. She has received a total of \$2,041.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Pruisman was discharged for using profanity on the job. She knew or should have known that her language was contrary to the standards the employer expected. The profanity was reported by an individual who did not seem to have any conflicts with Ms. Pruisman that might detract from her credibility as a witness.

Ms. Pruisman's use of profanity in a nursing home setting constituted a substantial disregard of the standards of behavior the employer had the right to expect. For the reasons cited herein, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

Ms. Pruisman has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated October 14, 2010, reference 01, is hereby reversed. Ms. Pruisman was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Pruisman will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw