

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

REBECCA K FITZ
515 CLINTON ST
BOONE IA 50036

EVANGELICAL FREE CHURCH HOME
112 W 4TH ST
BOONE IA 50036

Appeal Number: 04A-UI-07328-C
OC: 05/30/04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Evangelical Free Church Home filed an appeal from a representative's decision dated June 24, 2004, reference 01, which held that no disqualification would be imposed regarding Rebecca Fitz' separation from employment. After due notice was issued, a hearing was held on August 3, 2004 in Des Moines, Iowa. The employer participated by Ron Honson, Administrator; Jan Rardin, Director of Nursing; and Micah Olson, Jamie Smith, and Abbie Udelhoven, Certified Nursing Assistants. Ms. Fitz did not appear for the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Fitz was employed at the employer's care facility from July 15, 2002 until June 1, 2004 as a full-time certified nursing assistant. She was discharged because of abusive conduct towards residents.

On or about May 26, 2004, several incidents of abuse by Ms. Fitz were reported to management. It was reported that she had made disparaging remarks regarding a resident's penis by referring to it as a "dinky winky." She had deliberately stepped on a resident's foot after the resident accidentally rolled over her foot. Ms. Fitz had coached a resident with dementia to use profanity by whispering a word in her ear and having her say it aloud. She had also referred to a resident as a "fucking bitch." There were complaints that she would sometimes push on residents' stomachs to force them to have a bowel movement or to void urine. This is not an acceptable means of encouraging either a bowel movement or urination. It was also reported to management that Ms. Fitz made fun of a resident with dementia who had a habit of smearing her own feces on her body. Ms. Fitz made comments in the dining room, in the presence of other residents, that the resident liked to eat her own feces because it tasted like chocolate. She also referred to this resident as a "shit-eater." There was also a resident who did not like to have soap used on her body. Soap may be used on her if she does not know it is being used. Ms. Fitz would deliberately tease the resident by letting her know that she was using soap. Most of the above incidents were reported to the charge nurse at the time they occurred. However, the charge nurse never took disciplinary action against Ms. Fitz.

The final incident which caused the discharge was the fact that Ms. Fitz was again abusive on May 26. A resident was being combative while being bathed. The correct procedure under such circumstances is to leave the resident and re-approach at a later time. Instead, Ms. Fitz held his arms to his chest and poured cold water on him. The resident's wife shared the room and was in the room at the time of the incident. This incident, combined with the other reports received by the employer, caused Ms. Fitz to be discharged on June 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Fitz was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Fitz was discharged because of resident abuse. She was verbally abusive in referring to residents as a "fucking bitch" and a "shit-eater." She was physically abusive in deliberately stepping on a resident's foot and by pouring cold water on a combative resident. The conduct outlined herein was clearly contrary to the employer's interests as it jeopardized the employer's license to do business. Such conduct also exposed the employer to legal liability in the event of legal action by a resident's family.

The evidence of record amply demonstrates that Ms. Fitz deliberately and intentionally acted in a manner she knew to be contrary to the employer's standards. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. No overpayment results from this reversal of the prior allowance as Ms. Fitz has not claimed benefits on her claim filed effective May 30, 2004.

DECISION:

The representative's decision dated June 24, 2004, reference 01, is hereby reversed. Ms. Fitz was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b