

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

LORIA L HOWARD
1641 CHERRY HILLS DR
WATERLOO IA 50703

HCM INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-04221-CT
OC: 03/20/05 R: 03
Claimant: Respondent (1)

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:

HCM, Inc. filed an appeal from a representative's decision dated April 12, 2005, reference 01, which held that no disqualification would be imposed regarding Loria Howard's separation from employment. After due notice was issued, a hearing was held by telephone on May 12, 2005. The employer participated by Derek Wheeler, Administrator. Ms. Howard responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Howard was employed by HCM, Inc. from November 4, 2004 until March 16, 2005 as a full-time CNA. She was discharged from the employment.

On February 11, 2005, Ms. Howard received a written warning for using foul language in front of a resident. The specifics of what was said are unknown. On March 6, she received a written warning because she failed to dress a resident as directed. Ms. Howard was discharged because she was absent from work on a day she believed she was under suspension. She was notified of her discharge on March 16, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Howard 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. 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). The employer's testimony in this matter was conflicting. The employer initially indicated that the final act which caused the discharge was the fact that Ms. Howard used profanity in the presence of a resident. It was later indicated that the use of profanity had occurred on February 11. The employer then indicated that the final act was her failure to dress a resident as directed on March 6. The employer next indicated that the final act was an unreported absence of March 8. The employer testified that attempts were made to reach Ms. Howard beginning March 9 in order to suspend her from work because of the unreported absence of March 8. Clearly, the employer did not intend to discharge her as a result of the absence.

It appears from the employer's evidence that the final act was the allegedly unreported absence of March 8. However, Ms. Howard indicated in her fact-finding statement that the absence the employer considered unreported was a day she was serving a suspension. Given the conflicting state of the employer's evidence, the administrative law judge is inclined to give more weight to Ms. Howard's fact-finding statement. For the above reasons, the administrative law judge concludes that the employer has failed to establish that the discharge was based on a current act of misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated April 12, 2005, reference 01, is hereby affirmed. Ms. Howard was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc