

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Turpin worked for Good Samaritan Society, Inc. from August 25, 1981 until June 9, 2005 as a full-time certified nursing assistant. She was discharged based on an allegation of resident abuse.

Margaret, a resident at the facility where Ms. Turpin worked, complained that she and her roommate were not receiving the cares they required. Because of the complaint, a note was left for staff to make sure the cares were completed. The staff was also to notify each resident when cares were being given to the roommate. On June 4, Ms. Turpin awakened Margaret to let her know that her roommate had just been checked. Ms. Turpin acknowledged that she raised her voice to Margaret. When questioned by the administrative law judge as to why she raised her voice, she indicated it was because she was upset. Ms. Turpin was upset because she felt the resident had accused her of not doing her job.

The aide Ms. Turpin was working with on June 4, Jenny Hershey, filed a report indicating that Ms. Turpin had taken Margaret by both shoulders, shaken her, and yelled at her. Margaret, who is usually oriented, did not recall anything when questioned by the employer. Ms. Turpin denied the allegation. She was discharged on June 9, 2005 solely because of the allegation of resident abuse. The matter was reported to the Iowa Department of Inspections and Appeals (DIA). On July 15, 2005, a decision was issued finding that abuse had been founded.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Turpin 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). Ms. Turpin was discharged based on an allegation of resident abuse, an allegation that has been determined by DIA to be founded. The administrative law judge is not privy to the facts upon which DIA based its determination. Inasmuch as Margaret did not recall any inappropriate conduct when questioned by the employer, the administrative law judge presumes that she was likewise unable to provide DIA with details of the alleged abuse. Therefore, it must be concluded that the DIA determination was based solely on statements from Ms. Hershey, who worked with Ms. Turpin on June 4. Ms. Turpin and Ms. Hershey gave different accounts as to what transpired. Ms. Hershey indicated that Margaret was shaken by both shoulders while Ms. Turpin indicated she only touched her on the shoulder to awaken her. Ms. Hershey did not participate in the hearing to provide sworn testimony concerning her observations. Therefore, the allegation that Ms. Turpin shook Margaret has not been established to the satisfaction of the administrative law judge. Both parties agree that Ms. Turpin's voice was raised when she spoke to Margaret.

The administrative law judge does not doubt that raising one's voice to a resident is conduct that is contrary to the employer's expectations. Ms. Turpin did not use any inappropriate language towards Margaret. She did not have a history of inappropriate conduct with residents. Given the long duration of her employment, the administrative law judge is inclined to view her conduct of June 4, 2005 as an isolated occasion of poor judgment. Conduct so characterized is not considered disqualifying misconduct. See 871 IAC 24.32(1). Although the employer may have had good cause to discharge Ms. Turpin, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding

v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reason stated herein, benefits are allowed.

DECISION:

The representative's decision dated September 1, 2005, reference 01, is hereby affirmed. Ms. Turpin was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs