

**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**

**PEGGY A MCELHANEY
PO BOX 311
LOWDEN IA 52255-0311**

**COMMUNITY CARE INC
108 E INDUSTRIAL ST
DEWITT IA 52742**

**Appeal Number: 06A-UI-04254-CT
OC: 03/26/06 R: 04
Claimant: Appellant (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:

Peggy McElhaney filed an appeal from a representative's decision dated April 12, 2006, reference 01, which denied benefits based on her separation from Community Care, Inc. (CCI). After due notice was issued, a hearing was held by telephone on May 4, 2006. Ms. McElhaney participated personally. The employer participated by Carol Wells, Human Resources Director; Renee Williams, Assistant Director; and Theresa Hall, Supervisor.

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. McElhaney was employed by CCI from

October 28, 2005 until March 22, 2006 as a full-time living assistant. The employer operates residential facilities for mentally retarded individuals. Ms. McElhaney was discharged from the employment.

Ms. McElhaney's son resides in one of the employer's group homes but not the one where his mother worked. Her son has a diagnosis of mild retardation and explosive disorder. He also has cerebral palsy and is confined to a wheelchair. On March 22, Ms. McElhaney was visiting her son at his group home when the two became involved in an argument. She refused to leave when he asked her to and he became combative. She told him she was an employee of CCI and did not have to leave the premises. Other residents were present at the time. When her son began swearing at her, Ms. McElhaney struck him twice in the mouth. When he was moving away from her, she told him, "get your ass back here." The incident lasted approximately 30 minutes and caused staff and other residents to become upset.

Ms. McElhaney had undergone abuse training in January of 2006. She acknowledged that her actions towards her son were contrary to her training and that she would not have engaged in similar conduct with a resident who was not related to her. The above incident was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McElhaney 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. McElhaney was discharged as a result of an altercation with her son on March 22, 2006. There is no question but that her conduct constituted abuse. The fact that the conduct occurred while she was off duty is irrelevant. During the incident, she announced that she was an employee of CCI and did not have to leave as her son requested. Other residents were present to witness her, as a CCI employee, physically assaulting a resident. The fact that the resident she abused is her son is likewise irrelevant. An employer should not be expected to turn a blind eye to abuse simply because the abuser is a parent. Ms. McElhaney's son had the same rights as any other resident in the facility.

Ms. McElhaney's conduct constituted a substantial disregard of the standards the employer had the right to expect. For the reasons stated herein, benefits are denied.

DECISION:

The representative's decision dated April 12, 2006, reference 01, is hereby affirmed. Ms. McElhaney 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/pjs