

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY J WERNEBURG
Claimant

APPEAL NO. 10A-UI-04125-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 02/14/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nancy Werneburg filed an appeal from a representative's decision dated March 15, 2010, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on May 6, 2010. Ms. Werneburg participated personally and offered additional testimony from Pat Dublinske. The employer participated by Taesa Bailey, Administrator, and Elaine Neumann, Director of Nursing. The employer was represented by Ross Gardner, Attorney at Law.

ISSUE:

At issue in this matter is whether Ms. Werneburg 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. Werneburg was employed by Care Initiatives from January 8, 1993 until February 11, 2010. She was last employed full-time as a certified nursing assistant. She was discharged for scolding a resident.

On February 9, Ms. Werneburg and two coworkers entered a resident's room with the intention of getting him up. The resident, Marvin, had been incontinent and Ms. Werneburg yelled at him. She then directed him to sit on the toilet until she told him he could get up. The conduct was reported by another aide. Ms. Werneburg had received a verbal warning on December 18, 2009 because of the rough and gruff voice she used around residents. She was also warned about her use of profanity. She also received a verbal warning on May 6, 2009 after a family complained that she refused to assist a resident to the bathroom and to lie down.

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). It was Ms. Werneburg's responsibility to provide kind and considerate care to residents. She breached that obligation when she scolded a resident because he had been incontinent.

When questioned as to whether she yelled at Marvin on February 9, Ms. Werneburg replied that she did not recall. Nor did she recall whether any profanity had been used. Since she does not recall, the administrative law judge must accept as true the employer's hearsay testimony that she did yell at Marvin. Her conduct was clearly contrary to the type of behavior the employer had the right to expect. Her conduct was a violation of the resident's right to kind and considerate care and, as such, had the potential of compromising the employer's license to do business.

Ms. Werneburg had been verbally warned about the tone and voice she used around residents. She had also been warned that she was to provide necessary cares to residents. Given these verbal warnings, she knew or should have known that her job might be in jeopardy. For the reasons cited herein, the administrative law judge concludes that substantial misconduct has been established. As such, benefits are denied.

DECISION:

The representative's decision dated March 15, 2010, reference 01, is hereby affirmed. Ms. Werneburg was discharged by Care Initiatives for misconduct. 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw