

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

TANISHA D YOUNG
415 W DONALD ST
WATERLOO IA 50703-1223

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

Appeal Number: 06A-UI-01905-CT
OC: 01/22/06 R: 03
Claimant: Appellant (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:

Tanisha Young filed an appeal from a representative's decision dated February 9, 2006, reference 01, which denied benefits based on her separation from HCM, Inc. After due notice was issued, a hearing was held by telephone on March 15, 2006. Ms. Young participated personally. The employer participated by Maggie Austin, Director of Nursing, and Sandra Davies, Assistant Director of Nursing. Exhibits One through Four were admitted on the employer's behalf.

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. Young was employed by HCM, Inc., doing business as Cedar Falls Healthcare Center, from August 1, 2005 until January 26, 2006. She was employed full time as a certified nursing assistant and certified medication aide. On January 24, Maggie Austin noted that a resident was at the nurse's station and was yelling loudly. She noted that Ms. Young was present and asked her to take the resident to the bathroom. Ms. Young indicated that she could not because she was restricted to light-duty work. She indicated she had paged for an aide to come to assist the resident. Ms. Austin told her she needed to go look for the aides if they did not respond when paged. Ms. Young asked if she was expected to go into each room and check for the aides and was told she should. When she became argumentative with Ms. Austin, she was sent home for the remainder of her shift.

Ms. Young was not scheduled to work on January 25. On January 26, the employer heard from two members of housekeeping that Ms. Young had been making negative remarks about the employer in the presence of other staff and residents. As a result of the report, Ms. Young was discharged. She had not been making any negative comments about the employer. She had not been disciplined for any matters prior to January 24, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Young 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. Young was discharged as a result of her exchange with Ms. Austin on January 24 and as a result of comments reported by housekeeping on January 26. The employer did not present either written statements or testimony from the housekeepers who alleged that Ms. Young was making negative comments about the employer on January 26. Ms. Young was credible in her denial of the accusation. It is concluded, therefore, that the employer has failed to establish any act of misconduct on January 26.

The evidence establishes that Ms. Young argued with Ms. Austin on January 24 regarding whether she was required to go into each resident's room to seek aides when they did not respond to pages. She did not have a history of being argumentative or insubordinate. There was no profanity or name-calling during the exchange. The administrative law judge is inclined to view the conduct as an isolated instance of poor judgment rather than an intentional disregard of the employer's standards. While the employer may have had good cause to discharge Ms. Young, 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 reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 9, 2006, reference 01, is hereby reversed. Ms. Young was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc