

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER E WISE
Claimant

APPEAL NO. 08A-UI-00529-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 12/16/07 R: 02
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Amber Wise filed an appeal from a representative's decision dated January 4, 2008, reference 01, which denied benefits based on her separation from Care Initiatives. After due notice was issued, a hearing was held by telephone on January 31, 2008. Ms. Wise participated personally. The employer participated by Shanna Laughton, Administrator, and James Cole of Nurse Finders. Exhibits One and Two were admitted on the employer's behalf. The employer was represented by Lynn Corbeil of TALX Corporation.

ISSUE:

At issue in this matter is whether Ms. Wise was separated from employment for any disqualifying reason.

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. Wise was employed by Care Initiatives from August 23, 2005 until December 18, 2007. She was employed as a certified nurse aide and worked 30 to 40 hours each week. She was discharged for violating the employer's standards.

The incident that triggered Ms. Wise's discharge occurred on December 16, 2007, when she was overheard using profanity in the dining room in the presence of residents. She used the word "fuck" but the context in which it was used is unknown. Ms. Wise had been warned about her language because of statements she made to residents on September 9. She told a resident that he was wearing a "fricken" nice shirt, after which a supervisor cautioned her about the use of the term "fricken." Shortly thereafter, she was heard speaking to a resident who was trying to hit her. She told him to go ahead and hit her but that he had better make it a "fricken good one." As a result of her failure to heed the earlier admonition about the use of the term "fricken," Ms. Wise was given a written warning on September 10, 2007.

The decision to discharge Ms. Wise was also prompted by complaints that she was not available to perform her job on December 16 because she was spending an inordinate amount of time in the bathroom. The employer believed she was feeling the effects of having consumed

too much alcohol at the facility Christmas party the evening before. She completed her full shift on December 16.

The employer received a complaint that Ms. Wise was abrupt and curt with a resident on December 15 while attempting to transfer the resident. The resident indicated that Ms. Wise hurt her and did not care that she did so. Ms. Wise responded by telling the resident that she could sit there if she was not going to be cooperative and that she would return later. The aides were later advised to provide the resident with extra care because she was having a rough morning. Ms. Wise indicated she did not have the patience to deal with that particular resident that day.

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). For reasons that follow, the administrative law judge concludes that the employer has satisfied its burden of proof. Ms. Wise's use of profanity on December 16, 2007 is sufficient, standing alone, to constitute disqualifying misconduct. She had been warned verbally and in writing on September 10, 2007 about the language she used in front of residents.

The warning of September 10 concerned Ms. Wise's use of the term "fricken," which might not be considered by some to be a term of profanity. However, the warning she received served to put her on notice that the use of inappropriate language would not be tolerated. In spite of the warning, Ms. Wise used the term "fuck" in front of residents while in the dining room. Given her prior warning, she had to have known that such language was contrary to the employer's standards. A care facility for the elderly requires decorous language from staff members. Ms. Wise's language was clearly contrary to the standards of behavior the employer had the right to expect. Inasmuch as she had been previously warned about her language, the administrative law judge concludes that substantial misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 4, 2008, reference 01, is hereby affirmed. Ms. Wise was discharged for misconduct in connection with her employment with Care Initiatives. 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw