

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

DANIELLE L LOPEZ  
414 N 14<sup>TH</sup> AVE  
MARSHALLTOWN IA 50158

GRANDVIEW HEIGHTS INC  
910 E OLIVE ST  
MARSHALLTOWN IA 50158

Appeal Number: 04A-UI-12061-HT  
OC: 10/17/04 R: 02  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Grandview Heights, filed an appeal from a decision dated November 1, 2004, reference 01. The decision allowed benefits to the claimant, Danielle Lopez. After due notice was issued a hearing was held by telephone conference call on December 7, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Human Resources Supervisor Craig Koonce and Director of Nursing Josie Haynes. Exhibit One was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Danielle Lopez was employed by Grandview Heights from August 6, 2003 until October 18, 2004. She was a full-time certified nursing assistant.

On October 16, 2004, charge nurse Heather Shondel told the claimant to give a bath to one of the residents. She refused and left for the dining room. In a short while, Ms. Lopez came back and shouted at the charge nurse not to "try and fucking stop" her, she was quitting, and there was no reason why Ms. Shondel could not have taken the residents to the dining room as she had been "up here sitting on [her] ass." The charge nurse told the claimant she had no intention of stopping her and Ms. Lopez went to the break/smoking room where she stayed until the end of her shift, never returning to her duties.

The incident was reported to Director of Nursing Josie Haynes, who called the claimant to get her side of the story. The claimant admitted to refusing to give the resident a bath, stating she did not have time. A meeting was held on October 18, 2004, at which time Human Resources Supervisor Craig Koonce and Ms. Haynes discussed the incident further with the claimant. At that meeting she also admitted to using the bad language and spending the remainder of her shift in the break room. She was discharged for insubordination, leaving the job without permission and unprofessional conduct.

Danielle Lopez has received unemployment benefits since filing a claim with an effective date of October 17, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer

has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for refusing to perform an ordinary part of her job duties, and using profane and abusive language to her supervisor. Regardless of Ms. Lopez's opinion, it is inappropriate to use such language in the facility where it could have been overheard by residents, visitors and other staff. The employer has the right to expect employees to conduct themselves in a professional and civil manner, and any problems should be discussed rationally or brought to the attention of supervisors, rather than shouted in the middle of the facility. In addition, the claimant is expected to work her scheduled hours rather than spending the end of her shift in the break room instead of performing her duties. The claimant is guilty of conduct not in the best interests of the employer and she is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of November 1, 2004, reference 01, is reversed. Danielle Lopez is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$754.00.

bgh/kjf