

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

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Appeal Number: 04A-UI-02096-CT
OC: 01/25/04 R: 01
Claimant: Respondent (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:

Care Initiatives filed an appeal from a representative's decision dated February 20, 2004, reference 01, which held that no disqualification would be imposed regarding Tracy Frechette's separation from employment. After due notice was issued, a hearing was held by telephone on March 24, 2004. Ms. Frechette participated personally and was represented by Robert Kohorst, Attorney at Law, who offered additional testimony from Roland Frechette. The employer

participated by Kelly Jimerson, Administrator, and was represented by Lynn Corbeil, Attorney at Law. Exhibits One through Six were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Frechette was employed by Care Initiatives from August 27, 2001 until January 23, 2004 as a full-time CNA. She was discharged for failing to provide what the employer considered kind and considerate care to residents.

On February 15, 2003, Ms. Frechette received a warning after a complaint that she had yelled at a resident and pulled her up from her chair. The resident suffers from dementia and sometimes has to be spoken to firmly in order to be directed. Ms. Frechette did not yell at the resident but did speak to her firmly in order to try to get her to leave the dining room. Although she may have assisted the resident up from the chair, she did not pull her up inappropriately. On September 4, 2003, Ms. Frechette received a warning because coworkers complained that she was using a gruff tone of voice when telling a resident that she did not have time to take the resident to the restroom. The employer counseled her that she was not to take her frustrations out on residents.

The final incident which triggered the discharge was a complaint from a family member of a resident. The administrator spoke with the resident, who is alert and oriented, after the complaint. He complained that Ms. Frechette "slam-bammed" him when transferring him. The resident has one leg which is deformed. He complained that he experienced pain in his legs when Ms. Frechette was moving him to the electronic lift. Moving him to the lift requires that the aide place her hands under his legs to make the transfer. He had not voiced any complaint to Ms. Frechette on the occasions when she was making the transfer. He also complained that she had denied him the use of a bedpan. She had denied the bedpan on one occasion, with the permission of a supervisor, because she was needed elsewhere.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Frechette 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification from benefits may be imposed, the evidence must establish that the discharge was predicated on a current act which constituted misconduct within the meaning of the law. In the case at hand, Ms. Frechette's discharge was triggered by the complaint of January 22. The resident complained that she caused him pain when transferring him. Although he told the employer that he had told Ms. Frechette she was causing him pain, she denied that he ever voiced any complaints to her. The administrative law judge does not doubt that he may have experienced pain. However, the evidence failed to establish that Ms. Frechette was handling him roughly or that she disregarded his complaints of pain during the process.

The administrative law judge appreciates that the employer may have had good cause to discharge Ms. Frechette. However, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 20, 2004, reference 01, is hereby affirmed. Ms. Frechette was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/