

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

VICTORIA M DESPLANQUE  
PO BOX 446  
PLEASANTVILLE IA 50225

CARE INITIATIVES  
c/o TALX UC EXPRESS  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 04A-UI-01766-CT  
OC: 01/18/04 R: 02  
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, 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.

---

(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 16, 2004, reference 02, which held that no disqualification would be imposed regarding Victoria Desplanque's separation from employment. After due notice was issued, a hearing was held by telephone on March 11, 2004. Ms. Desplanque participated personally. The employer participated by Carolyn Perry, Director of Nursing, and Nan Sloan, Administrator. The employer was represented by Lynn Corbeil, Attorney at Law. Exhibits One through Nine 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. Desplanque was employed by Care Initiatives from November 11, 2002 until January 19, 2004 as a full-time CNA. She was discharged from the employment.

On September 12, 2003, Ms. Desplanque received a written warning after a resident sustained an injury to her toe. The resident, who is vision-impaired, had been taken to the restroom by Ms. Desplanque. The resident was walking forward from the restroom when she stubbed her toe. The matter was immediately reported to the appropriate personnel. Ms. Desplanque received another warning on December 19, 2003 when she left a resident unattended to go into the hallway to seek help. She received a verbal warning on December 19 because she was using a Hoyer lift with a resident without assistance from a coworker. Ms. Desplanque was aware of the requirement that two staff be present to use the Hoyer lift. There was a verbal warning on January 9, 2004 concerning attendance. Ms. Desplanque had been absent on at least three occasions because of problems related to transportation. Her last absence was on December 12, 2003. She received another verbal warning on January 11, 2004 because of an allegation that she was demanding that kitchen staff fix food for her. She had not demanded food from the kitchen staff, only asked about the availability of food.

The decision to discharge Ms. Desplanque was due to an allegation that she failed to take a resident to the restroom on January 16. Residents are to be taken to the restroom, or offered the opportunity to go, between meals and at bedtime. The shift coming on duty after Ms. Desplanque's shift on January 16 noted that a resident was wet. When questioned, the resident indicated that he had not been offered the opportunity to go to the restroom at any point during the day. The resident is alert and coherent and has the ability to use the restroom rather than a bedpan. The resident spends the bulk of his day sitting in the hallway near the nurse's station. No one noted during the shift that he was wet. It does not appear that he asked anyone to take him to the restroom. He did not have to use the restroom on the occasions when Ms. Desplanque offered to take him. As a result of this incident, Ms. Desplanque was discharged on January 19, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Desplanque 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). Although the employer's evidence establishes that Ms. Desplanque was an unsatisfactory employee, it does not establish that she willfully and wantonly disregarded the employer's standards or interests. There was an occasion when she left a resident unattended while she sought assistance and an occasion on which she was using the Hoyer lift without assistance. Although Ms. Desplanque used poor judgment on both occasions, neither incident was repeated after the warnings.

The employer failed to establish to the satisfaction of the administrative law judge that Ms. Desplanque did, in fact, fail to offer the resident an opportunity to go to the restroom on January 16. Her testimony that she did make the offer was found credible. The administrative law judge does not doubt that the resident was found wet. However, the evidence failed to establish that he was wet due to some failure on Ms. Desplanque's part.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, 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, benefits are allowed.

DECISION:

The representative's decision dated February 16, 2004, reference 02, is hereby affirmed. Ms. Desplanque was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf