

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDACE S HOLMES

Claimant

APPEAL NO. 09A-UI-01363-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PSALM 51-7 ENTERPRISES INC

Employer

**OC: 12/28/08 R: 12
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Psalm 51-7 Enterprises, Inc. filed an appeal from a representative's decision dated January 21, 2009, reference 01, which held that no disqualification would be imposed regarding Candace Holmes' separation from employment. After due notice was issued, a hearing was held by telephone on February 16, 2009. Ms. Holmes participated personally. The employer participated by Jeff Nullmeyer, Owner/Manager. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Holmes 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. Holmes was employed by Psalm 51-7 Enterprises, Inc., doing business as Molly Maid, from April 17 until May 13, 2008. She worked full time cleaning residential properties. She was discharged due to unsatisfactory conduct and performance during the 90-day probationary period.

Ms. Holmes worked as part of a two-person team assigned to clean four sorority houses. The final incident that prompted the discharge was a report that Ms. Holmes used profanity in one of the sorority houses on or about May 5. She and her coworker were in the bathroom when they observed a used sanitary napkin on the floor. Ms. Holmes commented that it made "no damn sense" that the item should be on the floor. The house mother at the sorority reported the incident to management but did not specify the language used by Ms. Holmes.

In making the decision to discharge, the employer also considered the fact that Ms. Holmes did not always spend the required amount of time at her assigned locations. It was her understanding that she was to spend at least one hour and twenty minutes in each location. For the most part, she was spending at least one hour and ten minutes at the various locations.

Sometimes she was there longer and on some occasions she was there less time. Ms. Holmes was never told she was in danger of losing her job for any reason.

REASONING AND CONCLUSIONS OF LAW:

Ms. Holmes was discharged from employment. 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). One of the reasons Ms. Holmes was discharged was the fact that she used profanity at work. She acknowledged that she did use the word “damn” while at a sorority house. Although the employer believed she used language that was more offensive, the employer acknowledged that the complaining party did not specify the language used. Ms. Holmes’ use of the word “damn” on an isolated occasion was not so outrageous as to constitute a substantial disregard for the employer’s standards.

The remaining reason for Ms. Holmes’ discharge was that she did not always spend the allotted amount of time in homes. For the most part, she complied with the employer’s standards. Moreover, she was never put on notice that she was engaging in conduct that, if it continued, would result in her separation from employment. Therefore, her failure to work the desired amount of time in each house on all occasions did not constitute deliberate and intentional misconduct.

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 Ms. Holmes, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. For the reasons cited herein, benefits are allowed.

DECISION:

The representative’s decision dated January 21, 2009, reference 01, is hereby affirmed. Ms. Holmes was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw