

**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**

**JUDY A OLSON
2525 – 1ST ST
SIOUX CITY IA 51106-5747**

**MID-STEP SERVICES INC
4303 STONE AVE
SIOUX CITY IA 51106**

**Appeal Number: 06A-UI-04169-CT
OC: 03/19/06 R: 01
Claimant: Appellant (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:

Judy Olson filed an appeal from a representative's decision dated April 13, 2006, reference 01, which denied benefits based on her separation from Mid-Step Services, Inc. After due notice was issued, a hearing was held by telephone on May 3, 2006. Ms. Olson participated personally and Exhibit A was admitted on her behalf. The employer participated by Jan Hackett, Human Resources Coordinator; Patty Shuck-Norton, Program Coordinator; and William Flynn, Contract Marketing Director. Exhibits One through Five were admitted on the employer's behalf.

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. Olson was employed by Mid-Step Services, Inc. from June 30, 2000 until March 22, 2006, as a residential living assistant. The employer operates a residential facility for mentally and physically challenged adults. Ms. Olson was discharged because she violated the standards of care she had been trained to use. If a resident is engaging in inappropriate behavior, staff members are not allowed to re-direct them by using physical force.

On March 18, 2006, Ms. Olson reported to work at 9:30 p.m. Josh, one of the residents, was still up and seated on the couch. Another staff member asked him to get up and go to bed but he laid down on the couch instead. Ms. Olson began pulling him by the arms in an effort to get him up. Another staff member reminded her that she could not pull on a resident and she stopped. The residents do not have scheduled bedtimes. Ms. Olson should have allowed Josh to remain on the couch and then approached him at a later point about going to bed. As a result of this incident, she was notified of her discharge on March 2, 2006. In making the decision to discharge, the employer also considered the fact that Ms. Olson had received a warning on April 14, 2004, based on an allegation that she had physically and forcefully re-directed a resident from the dining room to his bedroom. She denied that her actions on this occasion were contrary to the employer's standards.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Olson 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. 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). Ms. Olson was discharged for physically pulling on a resident in violation of the employer's standards. She knew that such conduct was contrary to the employer's standards based on her training and prior warning. Ms. Olson denied that she engaged in the conduct alleged in the April 20, 2004 warning. Even if she did not engage in the conduct, the warning did serve as a reminder that such conduct was prohibited.

The employer had the right to expect that residents would be treated with respect and dignity. Pulling on a resident to force that resident to go to bed, especially where the resident is not required to be in bed, constitutes a substantial deviation from the type of the conduct the employer expected. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 13, 2006, reference 01, is hereby affirmed. Ms. Olson was discharged for misconduct in connection with her employment. 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.

cfc/kkf