

**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

**MANDY L MCMAHON  
803 – 13<sup>TH</sup> AVE S  
CLINTON IA 52732**

**COVENANT CARE MIDWEST INC  
% TBT ENTERPRISES  
PO BOX 848  
GAITHERSBURG MD 20884-0848**

**Appeal Number: 04A-UI-01658-CT  
OC: 01/11/04 R: 04  
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:

Covenant Care Midwest, Inc. (Covenant) filed an appeal from a representative's decision dated February 9, 2004, reference 01, which held that no disqualification would be imposed regarding Mandy McMahan's separation from employment. After due notice was issued, a hearing was held by telephone on March 8, 2004. Ms. McMahan participated personally and Exhibit A was admitted on her behalf. The employer participated by Bernice Kirik, Administrator. Exhibits One through Eight 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. McMahon was employed by Covenant from February 27, 2002 until January 2, 2004 as a full-time CNA. On December 30, 2003, the employer received a complaint from a resident that Ms. McMahon had turned off his breathing treatment a few weeks prior. The resident uses a hand-held nebulizer for breathing treatments. He indicated that Ms. McMahon had entered his room in order to weigh him while he was having a treatment. He indicated that he had asked her to wait until he was done with the treatment but that she said she would not wait. He indicated that she then turned his machine off. When asked why he had not reported the incident sooner, he indicated that he did not because the incident was over. There were no witnesses to the incident and Ms. McMahon denied the allegation when confronted by the employer. She was suspended on December 31 and notified of her discharge on January 2.

The employer was speaking with the resident on December 30 because of a complaint he had voiced regarding another CNA. He reported that the CNA working on the 6:00 a.m. shift that day was rude to him in that she did not greet him when she entered his room. The resident is alert and oriented as to person, place, and time. On December 26, 27, and 28, Ms. McMahon had voiced complaints regarding this resident in which she alleged inappropriate sexual conduct on his part. She turned in a written complaint on December 30.

During its investigation, the employer questioned other residents that Ms. McMahon cared for. There were no other complaints regarding her care or conduct. The complaint that she had turned off the resident's breathing machine was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McMahon 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). Ms. McMahon was discharged based solely on the allegation that she turned off a resident's breathing machine. The administrative law judge found Ms. McMahon's testimony to be more persuasive than the employer's hearsay testimony. The resident's allegation came on the heels of Ms. McMahon's complaint that he was sexually inappropriate. This same resident complained immediately when he felt a CNA had been rude by not greeting him when she entered his room. Given that he would complain immediately about a relatively minor incident, it seems unlikely that he would wait several weeks before complaining about a situation in which his health may have been compromised. It seems more likely that his complaint was in response to Ms. McMahon's allegations that he was sexually inappropriate.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish that Ms. McMahon did, in fact, disconnect a resident's breathing machine. Inasmuch as this was the sole reason for the discharge, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 9, 2004, reference 01, is hereby affirmed. Ms. McMahon was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf