

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIOVANNI N SHIVERS
Claimant

APPEAL NO. 07A-UI-03731-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 03/11/07 R: 04
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. filed an appeal from a representative's decision dated March 29, 2007, reference 01, which held that no disqualification would be imposed regarding Giovanni Shivers' separation from employment. After due notice was issued, a hearing was held by telephone on April 26, 2007. Ms. Shivers participated personally. The employer participated by Paula Clark, Director of Nursing. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Shivers 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. Shivers was employed by Good Samaritan Society, Inc. from April 10, 2006 until March 9, 2007. She was employed part time as a certified nursing assistant at the employer's care facility. The final incident that prompted her discharge occurred on February 18 while she was working on the Alzheimer's unit. Two coworkers overheard Ms. Shivers tell a resident that he was "crazy" but would not remember being called "crazy" because he had Alzheimer's. It was also reported that she told a resident on February 18 that he "stunk." Ms. Shivers was suspended on February 19 pending a further investigation.

During its investigation, the employer learned that February 18 was not the first time Ms. Shivers had told a resident that they "stunk" or that they were "crazy." Her prior conduct had not been reported to management. Ms. Shivers received a warning on July 27, 2006 after an incident in the dining room in which a resident spit out her food. Three witnesses overheard Ms. Shivers say loudly, "she spit on me, I can't stand her." Ms. Shivers signed the warning without comment. She also received a warning on June 8, 2006 because she failed to set alarms for a resident. The alarms are to alert staff if a resident attempts to get out of bed.

Ms. Shivers filed a claim for job insurance benefits effective March 11, 2007. She has received a total of \$1,512.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

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. Shivers was discharged for providing less than kind and considerate care to residents. She knew or should have known that referring to a resident with Alzheimer's disease as "crazy" was contrary to the employer's standards. She had done this on multiple occasions. She also should have known that telling a resident he "stunk" was contrary to the employer's expectations. She had also done this on occasions other than February 18. There were more appropriate ways of letting a resident know that perhaps they needed a bath or change of clothing.

Ms. Shivers was on notice from the July 27 warning that the employer wanted residents to be treated with dignity and respect. Her conduct of February 18 was clearly contrary to the standards the employer had the right to expect. Her statements to the residents did not reflect the dignity and respect the employer expected. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Shivers has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 29, 2007, reference 01, is hereby reversed. Ms. Shivers 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. Ms. Shivers has been overpaid \$1,512.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw