

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 L MICHAUD
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GOOD SAMARITAN SOCIETY INC
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Appeal Number: 04A-UI-09819-CT
OC: 08/08/04 R: 02
Claimant: Appellant (2)

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 Michaud filed an appeal from a representative's decision dated August 31, 2004, reference 01, which denied benefits based on her separation from Good Samaritan Society, Inc. After due notice was issued, a hearing was held by telephone on October 4, 2004. Ms. Michaud participated personally and was represented by William Frye, Attorney at Law, who offered additional testimony from Teresa Jeffries. The employer participated by Scott Fisher, Administrator; Charlene White, Director of Nursing; and Peggy Jacobson, Charge Nurse.

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. Michaud was employed by Good Samaritan Society, Inc. from June 21, 1994 until July 29, 2004 as a full-time charge nurse. She was discharged for divulging information regarding a resident.

On July 16, 2004, Teresa Jeffries, a former employee at the facility, telephoned the facility to speak with her daughter, also an employee. Ms. Michaud answered the telephone and, during the course of the call, told Ms. Jeffries that Hazel, a resident, was in poor condition and that her health was declining. Hazel was a resident that Ms. Jeffries sometimes visited at the facility. As Ms. Jeffries was leaving the facility, she spoke with Peggy Jacobson, another charge nurse. She told Ms. Jacobson that Ms. Michaud had advised her of Hazel's ill and declining health. The employer considered this a breach of confidentiality by Ms. Michaud and, after an investigation, discharged her on July 29, 2004. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Michaud 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). The administrative law judge is satisfied that Ms. Michaud did, in fact, tell Ms. Jeffries that Hazel's health was declining. She did not give Ms. Jeffries any specifics as to Hazel's health status, only that her condition was poor. Ms. Michaud knew that Ms. Jeffries sometimes visited with Hazel at the facility. She also knew that Ms. Jeffries was a former employee at the facility. Given the above factors, the administrative law judge concludes that Ms. Michaud's conduct constituted no more than an isolated instance of poor judgment.

This might well be a different case if Ms. Michaud had provided Ms. Jeffries with information available only from a review of Hazel's medical records or if Ms. Jeffries had absolutely no relationship with Hazel. However, under the circumstances and considering the nature of the information provided, the administrative law judge concludes that the conduct did not evince a willful or wanton disregard of the employer's standards. Isolated instances of poor judgment or discretion are not considered acts of misconduct. See 871 IAC 24.32(1). 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 August 31, 2004, reference 01, is hereby reversed. Ms. Michaud was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs