

On August 8, 2005, Ms. Flick was in a resident's room with a nurse who was attempting to administer medication to the resident. The resident was resisting taking the medication. The nurse placed his fingers on the resident's nose to block air so that she would be forced to open her mouth. When the resident continued to refuse the medication, the nurse and Ms. Flick left the room. Resident abuse was alleged on the part of both Ms. Flick and the nurse and a report was filed with the Iowa Department of Inspections and Appeals (DIA). On September 14, the employer was notified by DIA that the allegation of abuse against Ms. Flick was unfounded but that the allegation against the nurse was founded.

Ms. Flick, as a CNA, was a mandatory reporter for allegations of abuse. Because the allegation of abuse against the nurse was determined to be founded, it was concluded by the employer that Ms. Flick had an obligation to report it. Since she had not, she was in violation of the employer's standards. Therefore, the decision was made that she would not be allowed to return to work. This decision has not been communicated to Ms. Flick. However, as of September 1, 2005, Ms. Flick had accepted full-time employment elsewhere.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Flick was separated from employment for any disqualifying reason. When she filed her claim effective August 21, 2005, she was unemployed because she had been suspended by the employer on August 11, 2005. Where an individual is unemployed due to a disciplinary suspension imposed by the employer, she is considered discharged and the issue of misconduct must be resolved. 871 IAC 24.32(9). The separation was converted to a discharge as of September 14, 2005. The same facts formed the basis of the suspension and the discharge. 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. Flick was discharged because she failed to report an incident of abuse committed by a nurse in her presence. The nurse held the resident's nose in such a manner as to prevent her from breathing through her nose, forcing her to open her mouth for medication. The nurse was not trying to harm the resident, only to get her to take her medication. The nurse's actions were not so clearly a case of resident abuse that Ms. Flick should have known to report it. At most, her failure was a good-faith error in judgment and not an intentional disregard of the employer's reporting requirements. The administrative law judge concludes that deliberate misconduct has not been established. While the employer may have had good cause to discharge Ms. Flick, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, no disqualification is imposed.

DECISION:

The representative's decision dated September 28, 2005, reference 01, is hereby reversed. Ms. Flick was suspended and later discharged by HCM, Inc. but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf