

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

**COSANDRA S HARRIS**  
**1703 29½ ST**  
**ROCK ISLAND IL 61201**

**GOOD SAMARITAN SOCIETY INC**  
**c/o TALX UC EXPRESS**  
**PO BOX 283**  
**ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-12221-HT**  
**OC: 11/06/05 R: 12**  
**Claimant: Respondent (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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge  
Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Good Samaritan, filed an appeal from a decision dated November 23, 2005, reference 01. The decision allowed benefits to the claimant, Cosandra Harris. After due notice was issued a hearing was held by telephone conference call on December 20, 2005. The claimant participated on her own behalf. The employer participated by Director of Nursing Paula Clarke and LPN Chris Meier.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Cosandra Harris was employed by Good Samaritan from June 30, 2003 until November 7, 2005. She was a full-time certified nursing assistant.

At the time of hire the claimant received a copy of the employee handbook. It classified violations by group and the progressive disciplinary action, which would be taken for violations of those rules. Three group two violations will lead to discharge. Ms. Harris received two written warnings for group two violations on April 6 and August 17, 2005.

On November 4, 2005, staff members reported to the nurse manager that Ms. Harris had been using profane language in the break room. This was reported to Director of Nursing Paula Clarke who instructed the nurse manager to get statements from the witnesses. The statements were generally in agreement that the claimant was upset that she had picked up an extra shift on her day off but had not been assigned to work with her regular group. She made statements that she was "tired of this mother-fucking place," that the "fucking schedule was not right," and that she was tired of working "like a fucking dog."

Profane language is not allowed anywhere in the work place, although Ms. Clark had previously told staff they could come to her office and shut the door if they wanted to "vent." The claimant was interviewed by Ms. Clarke and did not deny using bad language, only that she thought it was okay in the break room. She was issued another written warning for a group two violations and discharged as she had accumulated three warnings.

Cosandra Harris has received unemployment benefits since filing a claim with an effective date of November 6, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of

employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was not discharged solely for using inappropriate language in the work place. This was a third group two violation within a 12-month period which is grounds for discharge under the company policies. Although the language itself was offensive and inappropriate, that appears to have been an isolated incident and not in the presence of residents, guests or family. However, in conjunction with the other disciplinary actions, it was a course of conduct in direct violation of known company rules. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's decision of November 23, 2005, reference 01, is reversed. Cosandra Harris is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,695.00.

bgh/kjf