

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE L SLEETH
Claimant

APPEAL NO. 06A-UI-10363-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CENTERVILLE COMMUNITY
BETTERMENT INC**
Employer

**OC: 10/01/06 R: 03
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Vickie Sleeth filed an appeal from a representative's decision dated October 19, 2006, reference 01, which denied benefits based on her separation from Centerville Community Betterment, Inc. After due notice was issued, a hearing was held by telephone on November 7, 2006. Ms. Sleeth participated personally. The employer participated by Jackie Sharp, Executive Director.

ISSUE:

At issue in this matter is whether Ms. Sleeth 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. Sleeth was employed by Centerville Community Betterment, Inc. from November 9, 2005 until September 25, 2006. The employer operates a residential facility for mentally challenged adults and Ms. Sleeth was employed as a full-time residential aide. She was discharged from the employment.

Ms. Sleeth received a verbal warning on August 25, 2006 because of her language and because of medication errors. She had used the word "shit" with a resident and the resident later repeated the word at his workplace. She had given medications as prescribed on July 7 and August 22 but failed to chart the fact that they had been given. A medication was not given as prescribed on August 24. There were no further medication errors or language issues after the warning. On August 29, Ms. Sleeth received another verbal warning because the oven and baseboards at the facility were not cleaned.

The decision to discharge Ms. Sleeth was prompted by the fact that she did not clean to the employer's standards on September 25. Because there was no improvement in the quality of her work, she was discharged from the employment. Ms. Sleeth was at all times working to the best of her abilities.

REASONING AND CONCLUSIONS OF LAW:

Ms. Sleeth was discharged from employment. 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). Part of the reason for Ms. Sleeth's discharge was the fact that she used inappropriate language with a resident and committed medication errors. Although the term "shit" was inappropriate, it was not so outrageous a term that its use constituted an act of misconduct. Ms. Sleeth did have three medication errors. However, she took the employer's warning of August 25 to heart and did not have any further such errors.

It appears that the primary problem that caused the discharge concerned Ms. Sleeth's ability to clean to the employer's standards. She was working to the best of her abilities. The employer did not cite any cleaning issues for periods prior to August of 2006. The periodic failures to clean to the employer's satisfaction in August and September constituted no more than isolated instances of negligence. Conduct so characterized is not considered disqualifying misconduct. See 871 IAC 24.32(1). While the employer may have had good cause to discharge, 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 cited herein, benefits are allowed.

DECISION:

The representative's decision dated October 19, 2006, reference 01, is hereby reversed. Ms. Sleeth was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw