

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURIE A SMITH
Claimant

APPEAL NO. 10A-UI-05959-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

OC: 04/05/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Laurie Smith filed an appeal from a representative's decision dated April 12, 2010, reference 03, which denied benefits based on her separation from Heartland Employment Services. After due notice was issued, a hearing was held by telephone on June 7, 2010. Ms. Smith participated personally. The employer participated by Michelle LaFrentz, Payroll/Human Resources.

ISSUE:

At issue in this matter is whether Ms. Smith was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Smith was employed by Heartland Employment Services from November 10, 2009 until March 8, 2010 as a full-time LPN. She was discharged for using profanity in the presence of a resident.

On March 6, Ms. Smith and two coworkers were at the nurse's station dealing with a combative resident trying to get him into his wheelchair. When he was situated, Ms. Smith said "fuck this shit, I don't need these kind of people" and "why in the fuck do they take people like that." The resident was still in the area at the time. As a result of her comments, Ms. Smith was sent home. She was discharged on March 8 for violating the employer's rules regarding professional conduct. The above matter was the sole reason for the discharge.

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. Smith was discharged for using profanity in the presence of a resident in violation of a known work rule. She knew her conduct was contrary to policy and could result in her termination. The fact that she was upset about recent news regarding her

mother's health was not justification for her conduct. Nor was the fact that the resident was being combative.

The employer had the right to expect and demand decorous language and conduct from staff working with residents in a nursing home setting. Ms. Smith breached her duty to the employer by using profanity in the workplace. It is concluded, therefore, that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 12, 2010, reference 03, is hereby affirmed. Ms. Smith was discharged for disqualifying misconduct. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css