

**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**

**JERILYN M BROWN
PO BOX 284
LONE TREE IA 52755-0284**

**CHRISTIAN RETIREMENT SERVICES INC
OAKNOLL RETIREMENT RESIDENCE
701 OAKNOLL
IOWA CITY IA 52240**

**Appeal Number: 06A-UI-03680-DW
OC: 03/05/06 R: 03
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, 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Oaknoll Retirement Residence (employer) appealed a representative's March 22, 2006 decision (reference 01) that concluded Jerilyn M. Brown (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Cedar Rapids on July 19, 2006. The claimant participated in the hearing. Steve Rowe, David Anson, Megan Black, Kelly Daufeldt, Rebecca Kennedy and Diane Ely appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 22, 2003. The claimant worked as a part-time recreation aide. Daufeldt was the claimant's supervisor. The claimant received a copy of the employer's handbook. The employer's policy informs employees they can be immediately discharged for using offensive language or for being unwilling to carry out assigned job duties.

As a result of the claimant's negative attitude, comments and interactions with other employees at work, the employer gave the claimant a written warning or coaching on September 12, 2005. The employer addressed specific concerns regarding the claimant working as a team player, being respectful of others, being flexible and having a positive attitude. Since the employer talked to the claimant about these same areas of concern in the past, the employer informed the claimant she must change her attitude, have a positive outlook, respect all people and be willing to work with others. The employer also warned the claimant that if she was unwilling to maintain the type of change discussed with her on September 12, the employer was not willing to work with her any longer. (Employer Exhibit One.) The employer talked to the claimant about her progress in these areas of concern in October and December.

On March 6, the director of dining services, S.R., went to Daufeldt's office when the claimant was present. S.R. discussed a concern about tables in the activity room being left dirty after recreational activities. The claimant became defensive because she believed she cleaned up the tables and indicated the recreation aides were doing nothing wrong. Daufeldt understood that the claimant would not help any dietary aides clear off tables.

When the claimant left Daufeldt's office she was upset with S.R.'s comments. Black, a friend of Daufeldt's, was in the area waiting for Daufeldt. The claimant knew Black was a friend of Daufeldt's. The claimant released her frustration about S.R. to Black by telling her he was either a SOB or a F**** A***** and that he did not know what he was talking about. Black did not say anything to the claimant about her comments, but she reported the claimant's comments to Daufeldt. Black was surprised and taken back by the claimant's comments about a person the claimant apparently worked with.

The next morning, March 7, the claimant told Kennedy she thought she would be terminated because she had been asked to go to Ely's office. The claimant told Kennedy how she had been upset with S.R. and told Daufeldt's friend that he was a F***** A*****.

After talking to Kennedy, the claimant went to Ely's office. On March 7, the employer discharged the claimant for using inappropriate language to describe a co-worker and for failing to work as a team.

The claimant established a claim for unemployment insurance benefits during the week of March 5, 2006. The claimant filed claims for the weeks ending March 11 through July 15, 2006. The claimant received a total of \$2,278.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known after receiving the September 12, 2005 written warning, the employer would no longer accept any of her negative or derogatory comments about co-workers and that the claimant needed to be flexible and work as a team with her co-workers. Even though the claimant may have been upset about S.R.'s comments or his insinuation that recreational aides were not cleaning tables, the claimant intentionally and substantially disregarded the employer's interests when she used derogatory and demeaning language in describing a co-worker to Black who did not even work for the employer. As a result of the claimant's conduct on March 6, 2006, the employer discharged her for reasons constituting work-connected misconduct. As of March 5, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 11 through July 15, 2006. The claimant has been overpaid \$2,278.00 in benefits she received for these weeks.

DECISION:

The representative's March 22, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 5, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending March 11 through July 15, 2006. The claimant has been overpaid and must repay a total of \$2,278.00 in benefits she received for these weeks.

dlw/cs