

**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**

**AMY J WARD
115 S MAIN ST
IONIA IA 50645-9464**

**CHAUTAUQUA GUEST HOME
302 – 9TH ST
CHARLES CITY IA 50616**

**Appeal Number: 06A-UI-05062-CT
OC: 04/23/06 R: 02
Claimant: Respondent (1)**

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 for Misconduct

STATEMENT OF THE CASE:

Chautauqua Guest Home filed an appeal from a representative's decision dated May 9, 2006, reference 01, which held that no disqualification would be imposed regarding Amy Ward's separation from employment. After due notice was issued, a hearing was held by telephone on May 30, 2006. Ms. Ward participated personally. The employer participated by Ginger Schmidt, Assistant Director of Nursing; Misty Hobert, Director of Nursing; Sue Ayers, Administrator; and Sue Baldwin, Continuous Quality Improvement Nurse. Exhibits One through Five were admitted on the employer's behalf.

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. Ward was employed by Chautauqua Guest Home from November 1, 2000 until April 21, 2006 as a full-time certified nursing assistant. She was discharged from the employment.

On August 8, 2005, Ms. Ward received a written warning because a resident's feet were not elevated as required by doctor's orders. It was also noted that there was dried urine on his sheets. Ms. Ward was not the only individual providing care to this particular resident. On February 20, 2006, Ms. Ward received another written warning because of a conversation she was having with a coworker while in a resident's room. The coworker stated that the facility laundered soiled bed linens in with clothing. This statement caused the resident some distress.

On April 10, 2006, Ms. Ward received a written warning regarding her attendance. She missed two days in 2005, one in January and one in October, due to not having a baby sitter. On an occasion in June of 2005, her husband called to say she would be late but Ms. Ward never appeared for work or re-contacted the employer regarding her intentions. On December 30, 2005, Ms. Ward called to advise that her car was in a ditch. She called back several additional times to keep the employer advised as to her status. She did not report for work on that date. All of her absences in 2006 were for medical reasons, except for February 10 when she had standing water in her basement.

The decision to discharge Ms. Ward was based on the fact that she failed to clean a wheelchair on April 18. An inspector from the Iowa Department of Inspections and Appeals (DIA) was conducting a survey when it was noted that a wheelchair was dirty. Ms. Ward went to clean the chair and later reported that she had done so. However, the DIA inspector found that it was still too dirty and, therefore, counted the matter against the employer. When the employer looked at the chair after Ms. Ward indicated it had been cleaned, it was still visibly dirty. It did appear that someone had made some small effort in cleaning it. Ms. Ward and the other CNA assigned to third shift were responsible for keeping wheelchairs clean. As a result of the failure to adequately clean the wheelchair, Ms. Ward was notified of her discharge on April 21, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Ward was separated from employment for any disqualifying reason. 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). Although Ms. Ward may have been an unsatisfactory employee, the evidence failed to establish that she deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was an isolated instance of a resident not having his feet elevated as required. This same resident was found on sheets with dried urine. Inasmuch as Ms. Ward was not the only individual responsible for his care, the administrative law judge cannot conclude that she was solely responsible for the failures. There was also an occasion on which Ms. Ward engaged in a conversation with a coworker about laundry while in the presence of a resident. Although the conversation may have demonstrated poor judgment, it did not evince a willful or wanton disregard of the employer's standards.

The administrative law judge does not doubt that Ms. Ward's attendance adversely effected the employer's ability to provide the desired levels of care. However, her last unexcused absence was in October of 2005 when she was absent due to lack of child care. The final conduct that prompted the discharge was the failure to adequately clean the wheelchair. The administrative law judge did not have the benefit of seeing the wheelchair after Ms. Ward said she cleaned it. Therefore, it cannot be determined whether her belief that it was cleaned was a good-faith assertion or not. Any doubt will be resolved in Ms. Ward's favor. Although the cleaning may not have satisfied DIA, Ms. Ward did make the effort to clean the wheelchair.

As stated previously, the employer's evidence establishes only that Ms. Ward was an unsatisfactory employee. 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). In order to impose a disqualification, the misconduct must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). For the reasons stated herein, it is concluded that the employer has failed to satisfy its burden of proving that Ms. Ward should be disqualified from receiving benefits. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 9, 2006, reference 01, is hereby affirmed. Ms. Ward was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs