

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

MINA L MORRIS
PO BOX 183
ATLANTIC IA 50022

CARE INITIATIVES
c/o TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-12498-CT
OC: 10/24/04 R: 01
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:

Care Initiatives filed an appeal from a representative's decision dated November 15, 2004, reference 01, which held that no disqualification would be imposed regarding Mina Morris' separation from employment. After due notice was issued, a hearing was held by telephone on December 14, 2004. Ms. Morris participated personally and Exhibits A and B were admitted on her behalf. The employer participated by Larry Allen, Administrator; Laurie Buckhahn, Director of Nursing; Jackie Elings and Mindy Jacobsen, Certified Nursing Assistants. The employer was represented by Roxanne Bekaert of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Morris was employed by Care Initiatives from March 30 until October 22, 2004 as a full-time certified nursing assistant. At approximately 10:15 p.m. on October 21, Ms. Morris was in the break room with two other employees when she learned that she would be training a new CNA, Mindy Jacobsen, who was one of the other two employees in the room at the time. Ms. Morris stated that she did not want to “fucking” train the new employee. Both doors to the break room were closed at the time and it was past the time when most residents would be in bed.

After the three left the break room, Ms. Morris and Ms. Jacobsen proceeded to the nurse’s station and were on their way to answer a call light when the charge nurse advised that another individual would take over training Ms. Jacobsen. Ms. Morris had not stated to a supervisor or charge nurse that she would not perform the training as assigned. After the incident was reported to management, Ms. Morris was discharged for insubordination and for using profanity in violation of a known work rule.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Morris 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). Part of the reason for Ms. Morris’ discharge was an allegation that she was insubordinate in refusing to perform training as assigned. However, this contention has not been established. Ms. Morris did not tell any supervisor that she was refusing to perform the training. Although she told coworkers that she did not want to train, she was in the process of taking Ms. Jacobsen with her to answer a call light when the training was reassigned. Given this factor, the administrative law judge concludes that Ms. Morris was intending to provide the training as assigned, even though she may not have wanted to.

The other reason for the discharge was the use of profanity. The profanity was used behind closed doors and not within earshot of any residents. It was used only in the presence of two coworkers. For these reasons, the administrative law judge concludes that this single “hot-headed” incident constituted an isolated instance of poor judgment and not intentional misconduct. While the employer may have had good cause to discharge Ms. Morris, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative’s decision dated November 15, 2004, reference 01, is hereby affirmed. Ms. Morris was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/smc