

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. Combs was employed by HCM, Inc., doing business as Cedar Falls Healthcare Center, from February 18, 2004 until September 26, 2005. She worked as a full-time certified nursing assistant. She was discharged for verbal abuse of a resident.

On September 20, 2005, a resident assigned to Ms. Combs had a bowel movement in his undergarment. Ms. Combs told him she was tired of his "shit" and tired of him having this problem. She then threw a washcloth at him and began cleaning him up. Another staff person was in the room at the time. The resident, an individual who is alert and oriented, was questioned by the employer on September 21. He indicated that some words had been exchanged but declined to elaborate further because he did not want to get anyone in trouble. As a result of the incident, Ms. Combs was discharged on September 26, 2005.

Ms. Combs has been paid a total of \$412.00 in job insurance benefits since filing her claim effective September 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Combs 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). Ms. Combs was discharged for verbal abuse of a resident. She chastised a resident for having a bowel movement in his undergarment. Such incidents are to be expected in a care facility with elderly residents. Residents in such situations have already suffered the indignity of losing control of their bowels. A resident should not have to suffer the additional indignity of being chastised by a caregiver for actions over which they have no control. Ms. Combs' statements to the resident on September 20 were less than the kind and considerate care the employer had the right to expect the resident to receive.

After considering all of the evidence, the administrative law judge concludes that Ms. Combs' verbal abuse of the resident constituted a substantial disregard of the standard of behavior the employer had the right to expect. It is, therefore, disqualifying misconduct.

For the reasons stated herein, the administrative law judge concludes that Ms. Combs is not entitled to job insurance benefits. She has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 20, 2005, reference 01, is hereby reversed. Ms. Combs was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Combs has been overpaid \$412.00 in job insurance benefits.

cfc/pjs