

**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**

**KYLE P ERICKSON
4688 CAMEO AVE
ST ANSGAR IA 50472**

**GOOD SAMARITAN SOCIETY INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-06860-CT
OC: 05/22/05 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:

Good Samaritan Society, Inc. filed an appeal from a representative's decision dated June 21, 2005, reference 01, which held that no disqualification would be imposed regarding Kyle Erickson's separation from employment. After due notice was issued, a hearing was held by telephone on July 20, 2005. Mr. Erickson participated personally. The employer participated by Char White, Director of Nursing. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Erickson was employed by Good Samaritan Society, Inc.

from June 14, 2004 until May 20, 2005 as a full-time certified nursing assistant. He was discharged because of complaints from residents.

On August 30, 2004, Mr. Erickson received a verbal warning because two residents complained that he was "loud at times" and "childlike." The residents agreed that he had never displayed any aggressive or rough treatment towards them. Neither resident felt they were in danger while being cared for by Mr. Erickson. Mr. Erickson does speak loudly because he has a hearing impairment, a fact that was known to the employer. On December 13, 2004, Mr. Erickson received a final written warning because of residents' and coworkers' complaints. Five residents were interviewed. One of the five was not sufficiently alert to be responsive to questions. One resident indicated that she had no concerns about Mr. Erickson. The three remaining residents indicated that he was loud but did not indicate any abuse, verbal or otherwise, on Mr. Erickson's part.

The employer also spoke with two staff members before giving the warning of December 13. Mr. Erickson had indicated to an LPN that a resident did not want to shower because she was at social hour. When directed to give the resident a shower and then return her to the social hour, Mr. Erickson stated, "then you go down and take her ice cream away." He then proceeded to get the resident in question for a shower. The employer spoke with another employee who alleged that Mr. Erickson was touching her, brushing up against her, and blowing on her hair. There were no further complaints from the employee after Mr. Erickson was warned.

The decision to discharge was based on statements made by three residents on May 16 and May 19. One resident complained that Mr. Erickson worked slowly and was loud. The resident also reported that items had been knocked from the top of his television when Mr. Erickson threw a pillow on a chair. Another complaint was that Mr. Erickson had refused to cover a resident with a blanket and had told the resident to do it himself. The third resident complained that Mr. Erickson was "loud, rude, and immature." As a result of these final complaints, Mr. Erickson was discharged on May 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Erickson 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). Mr. Erickson was discharged because of complaints from residents. Their primary complaint was that he was loud. Given his hearing impairment, the administrative law judge cannot conclude that he was deliberately loud. The administrative law judge appreciates that his loud voice may have been uncomfortable or unsettling for residents. However, the fact remains that he was not intentionally raising his voice. There was no evidence that he raised his voice in anger or frustration. It appears that his normal speaking voice is loud.

The administrative law judge does not doubt that items may have been knocked from a resident's television when a pillow was thrown. However, the incident appears to have been accidental rather than intentional. Mr. Erickson denied that he refused to cover a resident as directed. The employer did not establish any history of Mr. Erickson refusing to provide assistance to residents as requested. The problems identified in the December warning were corrected by giving him the warning. The employer's evidence establishes only that

Mr. Erickson was an unsatisfactory employee. It does not establish a willful and wanton disregard for the employer's interests or standards. While the employer may have had good cause to discharge, 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, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated June 21, 2005, reference 01, is hereby affirmed. Mr. Erickson was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjw