

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PEGGY S GOODIN
Claimant

APPEAL NO. 10A-UI-01465-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

**Original Claim: 01/03/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Peggy Goodin filed an appeal from a representative's decision dated January 22, 2010, reference 01, which denied benefits based on her separation from Optimae Lifeservices, Inc. (Optimae) After due notice was issued, a hearing was held by telephone on March 11, 2010. Ms. Goodin participated personally. The employer participated by Tara Farley, Office Manager.

ISSUE:

At issue in this matter is whether Ms. Goodin was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Goodin was employed by Optimae from January 30, 2007 until December 23, 2009 as a full-time certified nursing assistant. She was discharged for striking a resident on December 22.

The resident, who suffers from mental illness, was in the dining room at the time of the incident. He struck one resident who was trying to assist him and Ms. Goodin went over. He also struck Ms. Goodin and attempted to strike her a second time. When he attempted to hit her a second time, Ms. Goodin punched him on the arm with her fist. This was witnessed by at least one dietary aide who was in the area. Ms. Goodin was suspended on December 23 and notified of her discharge on December 29, 2009. The above incident was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

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. Goodin was discharged for striking a resident. She knew or should have known from her training that striking a resident was contrary to the employer's

expectations. She knew or should have known to back away from a resident who was being combative and approach him at a later point.

Striking a resident has the potential of affecting the employer's license to do business. It could also subject the employer to legal liability in the event injury resulted from the incident. For the reasons cited herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated January 22, 2010, reference 01, is hereby affirmed. Ms. Goodin was discharged by Optima for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw