

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

WENDETTE P SMITH
1586 PHEASANT AVE
AUDUBON IA 50025

FRIENDSHIP HOME ASSOCIATION
714 N DIVISION
AUDUBON IA 50025

Appeal Number: 06A-UI-01158-CT
OC: 01/01/06 R: 01
Claimant: Respondent (2)

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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Friendship Home Association filed an appeal from a representative's decision dated January 20, 2006, reference 01, which held that no disqualification would be imposed regarding Wendette Smith's separation from employment. After due notice was issued, a hearing was held by telephone on February 16, 2006. Ms. Smith participated personally. The employer participated by Linda Borkowski, Food Service Supervisor, and Marlys Mathiesen, Administrator.

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. Smith was employed by Friendship Home Association, a residential care facility, from August 18, 2003 until December 20, 2005. She was employed full time as a dietary aide. She was discharged for using inappropriate language and for being insubordinate.

On the morning of December 20, 2005, Ms. Smith was observed taking a box from the facility to her vehicle. The food service supervisor was directed to look into the matter and advised Ms. Smith that she would need to see the contents of the box. Shortly thereafter, Ms. Smith went to her vehicle, retrieved the box and took it into the supervisor's office. Before the two could have a conversation, Ms. Smith was called away by another aide who needed to have a tray prepared for a resident. While she was in the kitchen, Ms. Smith began using profanity. She made reference to this "god damn fucking place" and said "screw you." Her voice was loud enough that she could be heard in the dining room. There were approximately ten residents in the dining area, some of whom turned to witness the commotion caused by Ms. Smith. The supervisor attempted to calm her down but she persisted in using inappropriate language. The employer's work rules, of which Ms. Smith was aware, prohibit using profanity at work.

When Ms. Smith was done with the tray, she returned to the supervisor's office. Once there, the administrator asked what was to be done about the bread in the box Ms. Smith had brought in from her vehicle. Ms. Smith called the administrator a "dumb bitch" directly to her face. She was discharged the same day. The above incident was the sole reason for the discharge.

Ms. Smith has received a total of \$1,020.00 in job insurance benefits since filing her claim effective January 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Smith 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. Smith's discharge was that she used profanity in the presence of residents in violation of a known work rule. The employer had the right to expect that residents would not be subjected to a stream of profanity being used in anger. She was also fired because of name-calling. She called the administrator a "dumb bitch." Ms. Smith apparently felt she was being accused of stealing from the facility. However, the employer never accused her of theft. The employer was merely investigating the possibility of theft. The employer's actions were reasonable given the fact that Ms. Smith was observed taking a box containing something from the facility. Ms. Smith's response to the employer's investigation of the matter was wholly unreasonable.

The administrative law judge concludes that Ms. Smith's language in the presence of residents and her insubordination towards the administrator are sufficient to establish disqualifying misconduct. Accordingly, benefits are denied. Ms. Smith 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 January 20, 2006, reference 01, is hereby reversed. Ms. Smith 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. Smith has been overpaid \$1,020.00 in job insurance benefits.

cfc/tjc