

**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**

**CATHY A NOWAK  
109 – 15<sup>TH</sup> AVE  
CHARLES CITY IA 50616-1506**

**CHAUTAUQUA GUEST HOME  
302 – 9<sup>TH</sup> ST  
CHARLES CITY IA 50616**

**Appeal Number: 06A-UI-04022-CT  
OC: 03/12/06 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Chautauqua Guest Home filed an appeal from a representative's decision dated March 31, 2006, reference 01, which held that no disqualification would be imposed regarding Cathy Nowak's separation from employment. After due notice was issued, a hearing was held by telephone on May 1, 2006. Ms. Nowak participated personally. The employer participated by Susan Ayers, Administrator; Kathy Cerwinske, Director of Nursing, and Misty Hobert, Director of Nursing.

#### 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. Nowak was employed by Chautauqua Guest Home from September 26, 1994 until March 3, 2006 as a full-time certified nursing assistant (CNA). She was suspended on March 3, 2006 because of an allegation of abuse. On November 26, 2005, Ms. Nowak answered a resident's bed alarm. Another CNA reported that she overheard Ms. Nowak saying to the resident, "What are you doing. Knock it off, you have to sit on the toilet." The CNA also reported hearing what she believed to be a slap. The CNA reported the matter to the nurse on duty.

When questioned about the incident, Ms. Nowak indicated that the resident had hit her while she was attempting to remove the resident's soiled undergarments. The employer acknowledged that the resident does become restless and will strike out at others. The resident is assigned to the Alzheimer's unit and was unable to give a statement concerning the incident. No one was in the room with Ms. Nowak and the resident when the incident occurred. There had been no prior allegations of abuse against Ms. Nowak.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Nowak 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. Nowak was discharged on an allegation of abuse. However, abuse has not been established by the evidence. Ms. Nowak was the only witness with first-hand testimony who participated in the hearing. It was her testimony that the resident struck her, accounting for the "slap" heard by the other CNA. Her testimony is credible given the employer's testimony that the resident at issue can become restless and strike out at others. The resident, herself, was not able to provide information as to what occurred.

Under the circumstances presented, the administrative law judge cannot conclude that abuse has been established. Ms. Nowak was in the employment for over 11 years without having an allegation of abuse prior to November of 2005. This factor, while not conclusive on the question of abuse, does suggest that she does not have a propensity towards abuse. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge based on requirements of the Iowa Department of Inspections and Appeals, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983).

#### DECISION:

The representative's decision dated March 31, 2006, reference 01, is hereby affirmed. Ms. Nowak was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs