

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET SHOEMAKER
Claimant

APPEAL NO. 08A-UI-01749-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN HOMES SOCIETY
Employer

**OC: 01/13/08 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lutheran Homes Society filed an appeal from a representative's decision dated February 14, 2008, reference 02, which held that no disqualification would be imposed regarding Margaret Shoemaker's separation from employment. After due notice was issued, a hearing was held by telephone on March 6, 2008. Ms. Shoemaker participated personally. The employer participated by Kris Pedersen, Human Resources, and Lottie Testrake, Director of Food Service. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

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

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. Shoemaker was employed by Lutheran Homes Society from August 24, 2000 until January 17, 2008. She was last employed as a full-time hydration aide. On or about January 8, 2008, a resident by the name of Charlotte indicated her belief that Ms. Shoemaker was going to accompany her on her doctor's visit that day. Ms. Shoemaker was off work on January 8 and had not told the resident she would go on the doctor's visit.

The director of nursing (DON) spoke to Ms. Shoemaker on January 9 about the issue regarding Charlotte and advised her not to contact Charlotte about the matter. When Ms. Shoemaker was working with Charlotte later that day, Charlotte raised the question of whether Ms. Shoemaker had said she would go on the doctor's visit with her. Ms. Shoemaker only responded to questions asked by Charlotte. As a result of her conversation with Charlotte, Ms. Shoemaker was suspended on January 10 pending a further investigation.

After its investigation, the employer met with Ms. Shoemaker on January 14 and outlined a written plan of action. She was not to offer services to residents unless she had permission from the DON or her direct supervisor. She was to refrain from having extended visits in residents' rooms. Ms. Shoemaker was to remain in her assigned area when passing food supplements. She was advised that a failure to follow the action plan could result in further disciplinary action, including termination. During the meeting of January 14, Ms. Shoemaker spoke of a resident's concern about

her son and the DON. The resident, Betty, apparently felt the two were having an inappropriate relationship.

Ms. Shoemaker was told during the meeting of January 14 that she was not to transport Betty to and from the dining room. She was told it was in her best interest not to have any contact with Betty. On January 17, Ms. Shoemaker noted that Betty needed to be transported from the dining room. She asked Deanna Loomis from medical records if she would transport her. Ms. Loomis questioned why Ms. Shoemaker could not transport her and was told it was at the direction of the DON. Later that day, Ms. Shoemaker went to Ms. Loomis' office to explain why she could not transport Betty. She shared with Ms. Loomis the concerns Betty had raised about her son and the DON. Ms. Loomis reported the conversation to management and, as a result, Ms. Shoemaker was discharged.

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). There must be a current act of misconduct to support a disqualification from benefits. 871 IAC 24.32(8). The final incident that prompted Ms. Shoemaker's discharge was her gossiping with Ms. Loomis on January 17. Although Ms. Shoemaker may have used poor judgment in sharing Betty's concerns with Ms. Loomis, her conduct was not an intentional violation of the terms of the January 14 action plan. The action plan called for her to refrain from "undesirable conduct." The only "undesirable conduct" specified in the action plan was lingering in residents' rooms. The action plan was not sufficient to put Ms. Shoemaker on notice that she could be discharged for engaging in gossip. Her conduct represented an isolated instance of poor judgment, which is not misconduct within the meaning of the law. See 871 IAC 24.32(1).

The employer's evidence as a whole failed to establish disqualifying misconduct. Ms. Shoemaker did not approach Charlotte after being directed not to. She only responded to questions asked by Charlotte, who was attempting to determine why she thought Ms. Shoemaker was to accompany her to the doctor. Ms. Shoemaker did not make any statements in front of Betty as to why she could not transport her to and from the dining room. While the employer may have had good cause to discharge, 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). Inasmuch as substantial misconduct has not been established, no disqualification is imposed.

DECISION:

The representative's decision dated February 14, 2008, reference 02, is hereby affirmed. Ms. Shoemaker was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw