

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW D NICHOLS
Claimant

APPEAL NO: 06A-UI-07504-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOPE HAVEN INC
Employer

OC: 06/18/06 R: 01
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Andrew Nichols filed an appeal from a representative's decision dated July 20, 2006, reference 02, which denied benefits based on his separation from Hope Haven, Inc. After due notice was issued, a hearing was held on September 19, 2006 in Spencer, Iowa. Mr. Nichols participated personally. The employer participated by Leann Blau, Residential Manager; Branae Robb, Residential Program Instructor; and Amanda Morony, Residential Specialist. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Nichols 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: Mr. Nichols was employed by Hope Haven, Inc. from June 23, 2003 until June 20, 2006 as a full-time residential instructor. His job was to provide assistance to three mentally retarded adult males living in an apartment. Mr. Nichols was discharged based on a complaint regarding his treatment of one of the residents.

On June 6, 2006, the employer received a complaint that Mr. Nichols had been disrespectful to a resident. (For purposes of this decision, the resident will be referred to as "B.") When "B" left the apartment on June 2 to go home for the weekend, Mr. Nichols told him he should expect to perform more chores when he returned because his housemates would have to clean up a mess he left in a common area. The residents have assigned chores. When chores are undone, it is left up to the three residents as to how they want to handle the matter.

When "B" returned to the apartment on June 5, Mr. Nichols noted that he had body odor. "B" was on the telephone when Mr. Nichols indicated he wanted to talk to him when he was done with his conversation. "B" asked what he wanted to discuss and Mr. Nichols indicated it could wait, which caused "B" to become agitated. The two began speaking to each other in raised voices with "B" insisting on wanting to know what Mr. Nichols wanted to discuss and Mr. Nichols

insisting on waiting until “B” was off the telephone. He was on the telephone with his mother at the time. Mr. Nichols spoke to the mother and indicated he was not yelling at “B.” The mother later reported that both parties were yelling. The employer considered Mr. Nichols’ conduct to be contrary to its policy of treating residents with respect and dignity. Therefore, he was discharged on June 20, 2006.

The only other issue that contributed to the decision to discharge concerned an incident that occurred in June of 2005. On that occasion, “B” complained that Mr. Nichols had grabbed him. Mr. Nichols was telling him that it was bed time and placed his hand on “B’s” shoulder. He did not push, shove or attempt to physically direct him to his room. Mr. Nichols had not been disciplined for any other matters during the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

Mr. Nichols was discharged from his employment. 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). The misconduct must be substantial. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The conduct complained of must constitute a willful and wanton disregard of the employer’s standards or interests. 871 IAC 24.32(1).

The final incident that prompted Mr. Nichols’ discharge was the complaint that he yelled at a resident. Although he had his voice raised, he was not otherwise verbally abusive to “B.” The mother, who could hear the exchange, did not report any inappropriate language or statements on Mr. Nichols’ part. She did report that both individuals had raised voices. Mr. Nichols used poor judgment in raising his voice on June 5. However, isolated instances of poor judgment do not constitute misconduct. The administrative law judge cannot conclude that the incident in June of 2005 represented poor judgment or an act of misconduct. Mr. Nichols merely placed his hand on “B’s” shoulder. His actions on this occasion were not clearly contrary to the employer’s standards.

Given the isolated nature of Mr. Nichols’ conduct on June 5, 2006, the administrative law judge concludes that willful and wanton misconduct have not been established. 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). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 20, 2006, reference 02, is hereby reversed. Mr. Nichols was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs