

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA S JACK**  
Claimant

**APPEAL NO: 11O-UI-14036-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 07/17/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's August 8, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A hearing was initially held on September 8, 2011. An administrative law judge had no record that either party responded to the hearing notice. Based on the administrative record, the August 8, 2011 determination was affirmed on September 9, 2011.

The employer appealed the September 9 decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing because the employer reported they had properly provided their phone number to participate at the hearing, but were not called.

Another hearing was held on November 28, 2011. The claimant again did not respond to the hearing notice or participate in the hearing. Darlene Brown and Jim Westphal appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2004. She worked full time providing client care to mentally challenged clients at the employer's facility.

During her shift the evening of July 10, 2011, the claimant and three other employees were involved with a client who acted out or exhibited a negative behavior. The claimant was not the client's primary caregiver, but she was called to help with the client.

Three other employees and the claimant decided to pick up the client off the floor and physically transport the client in a wheelchair back to her room. While in the room, employees held the

client's arms and legs while the client was in bed but still kicking and hitting employees. By the time the client became quiet and other tasks were finished, it was at the end of the shift. None of the four employees documented the incident with the claimant. Nor had anyone asked the charge nurse to assess the client after they physically restrained her. Documenting the incident and asking the charge nurse to assess the client after she had been restrained was a procedure the claimant and her co-workers were required to follow.

The next morning, an employee discovered this client had a black eye. No one knew how this occurred and there was nothing in the record indicating anyone had any problems with the client the previous night. The employer investigated by talking to employees and the client's roommate in an attempt to find out what happened. The employer learned the claimant and three other employees had been involved in an incident with the client during their shift and no one documented this incident. The employer discharged all four employees primarily for failing to document the incident with this client, which the employer's procedures required.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

As a long time employee, the claimant knew or should have known she was required to document the incident with the client who had acted out before she went home after her shift. Since the claimant and her co-workers restrained the client, this had to be documented. Additionally, the employees, including the claimant, failed to report the charge nurse they had physically transported the client by a wheelchair to her room and then restrained her. Without the claimant's testimony, the evidence indicates she committed work-connected misconduct by failing to timely document what had happened during her shift with a client. As of July 17, 2011, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment for benefits she may have received since July 17, 2011, will be remanded to the Claims Section to determine.

#### **DECISION:**

The representative's August 8, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 17, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The issue of overpayment or whether the claimant is eligible for a waiver of overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css