

**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**

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**FIVE STAR QUALITY CARE INC
C/o THOMAS & THORNGREN INC
PO BOX 280100
NASHVILLE TN 37228**

**Appeal Number: 06A-UI-07842-MT
OC: 07/02/06 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 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 25, 2006, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 21, 2006. Claimant participated. Employer participated by Jane Jacobus, Administrator and Bob Schuchman, Regional Director Operations.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 17, 2006. Claimant quit due to a

conflict with her supervisor. Claimant's son broke up with her supervisor's daughter in April 2006. Claimant experienced some minor job changes after that. Claimant blamed the job changes on retaliation for the breakup. Claimant did not take these job issues to upper management. Claimant quit without trying to resolve this personality conflict. The job changes were within claimant's job description. Claimant alleged that she was not paid for overtime worked. Claimant was paid for all overtime worked. Claimant would often not clock out when running personal errands. Some smart comments were made by the supervisor after the breakup. The comments were not work-related. Claimant did not report the comments to management. The smart comments did not rise to the level of harassment.

Claimant was also confronted at work by the supervisor's daughter. The supervisor did not know about the confrontation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the claimant quit for good cause attributable to the employer. The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer when claimant terminated the employment relationship because of a conflict with her supervisor. Claimant quit due to work assignments that were well within the job description. There was no effort by claimant to resolve these work issues with upper management. The smart comments were not harassment. While inappropriate the comments were not so significant that they amount to a detrimental work environment. Claimant left due to a personality conflict with her supervisor. Claimant was overly sensitive to the conflict caused by their children's breakup. Claimant magnified the issue beyond reality. The failure to make an effort to resolve the conflict with upper management detracts from a finding that the conflict was significant. This is a quit without cause attributable to employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(22) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (22) The claimant left because of a personality conflict with the supervisor.

The next issue concerns an overpayment of unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds that claimant is overpaid unemployment insurance benefits in the amount of \$1,320.00 pursuant to Iowa Code section 96.3-7 because a decision has determined claimant is ineligible to receive benefits due to a voluntary quit without good cause attributable to employer.

Since claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until claimant has requalified or is otherwise eligible.

DECISION:

The decision of the representative dated July 25, 2006, reference 01, is reversed. Unemployment insurance benefits are withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant is overpaid unemployment insurance benefits in the amount of \$1,320.00.

mdm\cs