

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY L ANDERSON**  
Claimant

**APPEAL NO. 07A-UI-06618-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 06/03/07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Five Star Quality Care, Inc. (Five Star), filed an appeal from a decision dated June 25, 2007, reference 01. The decision allowed benefits to the claimant, Cindy Anderson. After due notice was issued a hearing was held by telephone conference call on July 24, 2007. The claimant participated on her own behalf. The employer participated by Administrator Patrick Quigley, Director of Nursing Nancy Dzinic, RN Becky Hinton and LPN Christina Martin.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Cindy Anderson was employed by Five Star from August 25, 2006 until June 6, 2007, as a full-time certified nursing assistant. During the course of her employment Ms. Anderson had complained to Administrator Patrick Quigley in November 2006 about her disagreement and concerns with resident care. The issues were discussed with the charge nurses and unit managers.

In April 2007 the claimant again spoke with Mr. Quigley saying she felt LPN Christina Martin was harassing her, was “on her back” all the time, and “riding her” about her job. They did not “see eye to eye” about her job duties. He investigated by speaking with Ms. Martin and Director of Nursing Nancy Dzinic and felt the complaints were largely the result of the claimant and Ms. Martin working double shifts together when the work load was harder and larger, and a personality conflict. He notified Ms. Anderson about his conclusions.

On June 3, 2007, RN Becky Hinton was in the facility and Ms. Anderson approached her around 1:00 p.m. She said Ms. Martin was “riding her” again and she did not want to work with her. Ms. Hinton told her to “get through the night” and speak with DON Dzinic the next day. Around 6:30 p.m. the claimant called Ms. Hinton at home and said she “had to leave” because Ms. Martin was still “riding her.” Ms. Hinton asked to speak with Ms. Martin and before she

could get back to talk with the claimant, she had left without permission from a supervisor or securing a replacement.

The employer considered her a voluntary quit because she had walked off the job mid-shift but would have discharged her had she returned because leaving before the end of the shift without permission from a supervisor or a replacement is a dischargeable offense.

Cindy Anderson has received unemployment benefits since filing a claim with an effective date of June 3, 2007.

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

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant was discharged for violation of a known company rule. She left the facility without permission from a supervisor or finding a replacement, thus leaving the employer short-staffed and jeopardized the care of the residents. Her problems with the charge nurse appear to be largely one of a personality conflict and a difference of opinion regarding what cares the residents should get and how those should be administered. It is the responsibility of the charge nurse to make those determinations within employer's policies and legal guidelines and the claimant's disagreement with that does not constitute good cause to walk off the job mid-shift and leave inadequate staff to care for the residents.

The claimant was discharged for misconduct and is disqualified from receiving unemployment 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 claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of June 25, 2007, reference 01, is reversed. She is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,657.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs