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

CHARLOTTE M JONES
Claimant

APPEAL NO: 13A-UI-08862-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 07/07/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 25, 2013, reference 01, that held the claimant was not discharged for misconduct on July 3, 2013, and benefits are allowed. A telephone hearing was held on September 5, 2013. The claimant participated. Diana Hartman, DON, participated for the employer. Employer Exhibits 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on July 20, 2010, and last worked for the employer as a full-time C.N.A. on June 27, 2013. She received the employer policies in an employee handbook.

On June 27, 2013 a resident reported to a PT who reported to the DON claimant failed to use an EZ stand during transfer. Claimant worked on June 29 and 30. The employer suspended claimant for three days and discharged her on July 3 for resident transfer policy violation.

Claimant denies the EZ stand was required for the resident transfer. The employer did not offer the resident care plan or other evidence it was required. Although the employer offered documents of prior claimant discipline, it did not offer this as a reason for discharge.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on July 3, 2013.

The employer failed to present documentary evidence it had available to it the resident care plan required an EZ stand for transfer. Claimant denied it. She denied there was any notice or requirement. Although she had been subject to prior discipline, the employer relied on this reason that is not established as job disqualifying misconduct.

DECISION:

The department decision dated July 25, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on July 3, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

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