

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

DANIEL ODURO
1318 – 13TH PL
DES MOINES IA 50314

FIVE STAR QUALITY CARE INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 05A-UI-08230-DWT
OC: 07/10/05 R: 02
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. (employer) appealed a representative's August 2, 2005 decision (reference 01) that concluded Daniel Oduro (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on August 29, 2005. The claimant participated in the hearing. Candy Marcum, the director of nursing, and Donna Manning appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 19, 1999. After the claimant became a licensed LPN, he did not start working as an LPN for the employer until May 2005. Before the claimant started working as an LPN, the claimant filed a complaint with the Iowa Civil Rights Commission. After he filed this complaint, the employer paid the claimant for PTO time he had previously earned but had not received and then hired him as an LPN. When the claimant accepted employment as an LPN, he informed the employer he could not work the 6:00 a.m. to 2:00 p.m. shift because his wife worked that shift and their children needed someone at home in the morning. Even though the claimant did not want to work past 9:30 p.m., he accepted the 2:00 to 10:00 p.m. shift.

Marcum received complaints from the two nurses that supervised the claimant on the 2:00 to 10:00 p.m. shift. The claimant complained that these two supervisors discriminated against him. Marcum decided the claimant had been on an extended orientation long enough and she needed to personally supervise him for about a week. On June 17, Marcum told the claimant the following week he needed to work the 6:00 a.m. to 2:00 p.m. shift.

Since the claimant's wife works a 6:00 a.m. to 2:00 p.m. shift, the claimant had to find someone to take care of his children if they both started work at 6:00 a.m. On June 26, Markum told the claimant she expected him to report to work at 6:00 a.m. the next day. The claimant asked for a week's extension because even though he had found someone to take care of his children, it was cost prohibitive for him to hire this person. The claimant and his wife were trying to make arrangements with her employer for a leave or a change in her scheduled hours. Markum gave the claimant until June 28 to report to work at 6:00 a.m. When the claimant had not made satisfactory arrangements for childcare on June 28, he resigned.

The claimant resigned because he told the employer when he started working as an LPN he could not work the 6:00 a.m. to 2:00 p.m. shift. The claimant did not believe it was reasonable for Markum to make him immediately change his work schedule when she was usually at the facility until 7:00 p.m. Markum reported to work at 8:00 a.m. Markum did not tell the claimant that the 6:00 a.m. start time was only temporary. She only planned for the claimant to work this shift for about a week so she could personally observe his work performance and decide if the employer would continue the claimant's employment as an LPN.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant voluntarily quit his employment on June 28, 2005. When claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits employment with good cause when he quits because of a substantial change in the employment relationship. 871 IAC 24.26(1). The facts reveal the claimant initially told the employer he could work the 6:00 a.m. to 2:00 p.m. shift.

Even though Markum may not have been present when the employer hired the claimant, the employer knew the claimant was unable to work this shift. Markum failed to follow the conditions of the claimant's employment by requiring him to work a shift he was unable to work.

Even though the employer had compelling business reasons for requiring the claimant to work a shift he could not work, the employer still substantially changed the claimant's employment by changing the shift he had agreed to work. Under the facts of this case, the claimant quit his employment for reasons that qualify him to receive unemployment insurance benefits.

DECISION:

The representative's August 2, 2005 decision (reference 01) is affirmed. The claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. As of July 10, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw