

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

SETH OSLER
503 S CHESTNUT
GLENWOOD IA 51534

FIVE STAR QUALITY CARE INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11310-AT
OC: 10-02-05 R: 01
Claimant: Appellant (5)

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 96.5-2-a – Discharge
871 IAC 24.32(9) – Disciplinary Layoff

STATEMENT OF THE CASE:

Seth Osler filed a timely appeal from an unemployment insurance decision dated October 31, 2005, reference 02, which disqualified him for benefits. After due notice was issued, a telephone hearing was held November 15, 2005 with Mr. Osler participating. Administrator Eric Seitz participated for the employer, Five Star Quality Care, Inc.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Seth Osler was employed by Five Star Quality Care,

Inc. from September 13, 2004 until he was suspended August 17, 2005 and subsequently discharged on November 1, 2005. He last worked as a direct support professional.

The incident for which he was suspended and discharged occurred on the evening of August 16, 2005. Mr. Osler was assisting a client in changing her clothes. Although the client required restraint when sitting upright, Mr. Osler put her in a chair with no safety belt. As he turned to get the client's clothing, the client fell forward, striking her head on the floor. Mr. Osler could have put the resident in her wheelchair which was equipped with a safety belt, or he could have changed her clothes while she lay in the bed. Mr. Osler did not request assistance because of short staffing. Mr. Osler had cared for the resident before and knew of the doctor's order that she be restrained when sitting upright.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was suspended and discharged for misconduct in connection with his work. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

A disciplinary suspension is treated as if it had been a discharge. See 871 IAC 24.32(9). The question, as in a discharge, is whether it was imposed because of misconduct in connection with the work. The evidence establishes that Mr. Osler knew that the resident required restraint when seated. Despite this he did not restrain her; and, as a result of this, she was injured. Alternatives existed to prevent the injury. The administrative law judge concludes that the evidence establishes misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated October 31, 2005, reference 02, is modified. The claimant was suspended and subsequently discharged because of misconduct in connection with his work. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

kkf/kjw