

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

DELOROS D MEINDERS
PO BOX 21132
DES MOINES IA 50321

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

Appeal Number: 06A-UI-04749-CT
OC: 08/07/05 R: 02
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(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. filed an appeal from a representative's decision dated April 24, 2006, reference 03, which held that no disqualification would be imposed regarding Deloros Meinder's separation from employment. After due notice was issued, a hearing was held by telephone on May 18, 2006. The employer participated by Nancy Caulfield, Director of Nursing, and Ted Powell, Administrator. Exhibits One through Six were admitted on the employer's behalf. Ms. Meinders did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Meinders was employed by Five Star Quality Care, Inc. from July 6, 2005 until March 15, 2006 as a full-time registered nurse. She was discharged as a result of an incident that occurred on the March 10 through 11, overnight shift. Ms. Meinders lost a porcelain tooth from her bridgework and was noticeably upset over the matter. She was talking very loudly and saying the incident would not have occurred if the residents were not so demanding. At one point, she was on her hands and knees on the floor looking for the tooth. She commented loudly and used profanity regarding how dirty the floor was. Ms. Meinders also stated that a resident who was in the area should mind her own business. During the incident, Ms. Meinders was speaking so loudly that she could be heard in another unit. The conduct continued for approximately one hour before she left to get her tooth repaired. The incident took place in and around the nurse's station.

The employer spoke with Ms. Meinders concerning the incident on March 13. After an investigation, she was notified of her discharge on March 15. She filed an additional claim for job insurance benefits effective April 2, 2006. She has received \$324.00 in job insurance benefits for each of the six weeks ending May 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Meinders was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The incident of March 10 through 11 was contrary to the employer's standards and interests. Although the conduct did not occur in a resident's room, Ms. Meinders was loud enough that she could have been heard by residents who were in their rooms. Her comments about residents being too demanding may have had a chilling effect on residents, causing them to be reluctant to ask for required services. Telling a resident, either directly or indirectly, to mind her own business was not the type of kind and considerate care the employer had the right to expect.

Ms. Meinders' conduct in being loud and using profanity was not the type of behavior the employer expected in a care facility. If there had been a brief explosion of temper, the administrative law judge might be inclined to view the matter as a single "hot-headed" incident. However, the incident lasted for at least one hour. The administrative law judge concludes that Ms. Meinders' conduct represented a substantial deviation from the standards the employer had the right to expect. It is concluded, therefore, that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Meinders has received benefits since filing her additional claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 24, 2006, reference 03, is hereby reversed. Ms. Meinders was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Meinders has been overpaid \$1,944.00 in job insurance benefits.

cfc/pjs