

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE M MAREAN

Claimant

APPEAL NO. 07A-UI-07483-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC

Employer

**OC: 06/24/07 R: 03
Claimant: Respondent (2-R)**

Section 96.5(2) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Five Star Quality Care (Five Star), filed an appeal from a decision dated July 24, 2007, reference 02. The decision allowed benefits to the claimant, Michele Marean. After due notice was issued, a hearing was held by telephone conference call on August 20, 2007. The claimant participated on her own behalf. The employer participated by Business Office Manager April Hughes and Administrator Raj Reddy.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Michele Marean was employed by Five Star from November 10, 2006 until June 11, 2007, as a full-time housekeeper and laundry worker. The claimant went on a medical leave of absence effective April 23, 2007, with no specific return to work date. The medical leave of absence policy was provided to her and it requires an employee to update the employer periodically during the leave.

Ms. Marean met with Administrator Raj Reddy on May 29, 2007, as no medical documentation had been provided by the claimant. Her doctor was to have faxed the report in early May, but it does not appear to have been received. She made no attempt to contact her physician to request an updated report be sent, or to ask that the original one be resent. Instead, she waited until receiving a letter from the employer on June 8, 2007, notifying her that she had until June 11, 2007, to provide a current medical report, along with restrictions, to the employer.

The claimant contacted her doctor's office on June 9, 2007, and was told the material would be faxed. However, at no time did she check with the employer to find out whether the documentation had been received either on June 9 or 11, 2007. It had not been received by the employer. She did nothing more and was eventually notified by the corporate office her employment was at an end. Even at that time, she did not attempt to contact the employer to provide the required information.

The claimant has been released to return to work by her doctor only for sedentary work, which means she is not able to return to work at her regular job with Five Star. It is unclear whether she has the training or work experience to do office-type work.

Michele Marean has received unemployment benefits since filing a claim with an effective date of June 24, 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant was notified by the employer, more than once, of the necessity to provide updated information from her physician regarding her physical condition and her work restrictions. She made no diligent effort to do this. The doctor may or may not have faxed information to Five Star on May 9, 2007, but it was apparent to the claimant this information was not received, or else more current information was required. This was emphasized in the letter received on June 8, 2007, which also contained an advisement that her employment would end unless the information was received.

Even with this letter, the claimant again made no real effort to make certain the information was sent, and received. She did not call the Five Star representative to make sure the fax had been received, or if it had, if it was sufficient. Ms. Marean could provide no explanation for her failure to diligently follow up on this and make sure her employment was secure. This failure must be considered a voluntary refusal to follow the specific instructions of her supervisors and a voluntary quit without good cause attributable to the employer. She is disqualified.

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.

The issue of whether the claimant is able and available for work is remanded to the Claims Section for determination.

DECISION:

The representative's decision of July 24, 2007, reference 02, is reversed. Michele Marean 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 \$812.00.

The issue of whether the claimant is able and available for work since filing her claim for benefits is remanded to the Claims Section for determination. The claimant has been on medical leave since the beginning of her unemployment claim. Although she was released to her doctor for office-type work, it is not certain the claimant is qualified for such work given her work history, training, education, and experience.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw