

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRI A BRIETENSTEIN**

Claimant

**APPEAL NO: 06A-UI-09200-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**

Employer

**OC: 08/13/06 R: 01  
Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Five Star Quality Care, Inc. (Five Star), filed an appeal from a decision dated September 1, 2006, reference 01. The decision allowed benefits to the claimant, Sherri Breitenstein. After due notice was issued, a hearing was held by telephone conference call on September 27, 2006. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Director of Nursing Denise Krueger and Administrator Ken Poock. Exhibit One was admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Sherri Breitenstein was employed by Five Star from October 6, 2004 until August 14, 2006. She was a full-time certified nurse aide. She worked the 6:00 a.m. until 2:00 p.m. shift. During the course of her employment, the claimant had received several written warnings for attendance.

On August 11, 2006, the claimant came to the nurses station during the breakfast period and told RN Cindy Larison she wanted to leave. She had had a confrontation with another aide and was upset. Ms. Larison told her she could not go because it would leave the facility short staffed but that she would go and talk to the other aide. The other aide said no one had yelled at the claimant, but she had been asked to stand up and help with the breakfast duties for the residents.

Later, Ms. Breitenstein came back to Ms. Larison and again said she wanted to go home. This time she was upset because “no one was talking to [her].” She was told again she could not leave because the facility would be short staffed. At that time, she said she would “just quit” and punched out at 8:58 a.m.

On Sunday, August 13, 2006, Ms. Breitenstein called Director of Nursing Denise Krueger at her home to talk about the incident and the employer asked her to come to the facility the next day at 2:00 p.m. and they would talk then. At the meeting, the claimant asked for her job back and the employer denied the request because she had quit on August 11, 2006, rather than stay to work as

ordered by her supervisor. The employer's decision not to allow her to return was also influenced by her poor attendance record during her employment.

Sherri Breitenstein has received unemployment benefits since filing a claim with an effective date of August 13, 2006.

**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.

871 IAC 24.25(6), (27) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(27) The claimant left rather than perform the assigned work as instructed.

The claimant chose to quit rather than to stay on duty as required by her supervisor. Her decision was apparently based on a conflict with other employees. Under the provisions of the above Administrative Code sections, neither of these reasons constitutes good cause attributable to the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of September 1, 2006, reference 01, is reversed. Sherri Breitenstein 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 \$687.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw