

**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**

**DIANN L HAMMELL  
10 GARFIELD LN  
GLENWOOD IA 51534-6243**

**FIVE STAR QUALITY CARE INC  
C/O THOMAS & THORNGREN INC  
PO BOX 280100  
NASHVILLE TN 37228**

**Appeal Number: 06A-UI-04302-H2T  
OC: 03-05-06 R: 01  
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 – Suspension/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 6, 2006, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on May 8, 2006. The claimant did not participate. The employer did participate through (representative) Darleen Brown, Human Resources Assistant and Erica Simpson, Qualified Medical Retardation Professional Assistant. Employer's Exhibits One through Three-D were entered and received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a direct support professional full time beginning June 28, 2005 through date of hearing. The claimant was suspended from March 3, 2006 through April 24,

2006. The claimant was suspended because she did not properly transport a resident, resulting in the resident's need for medical care. The claimant had been trained how to properly transport this particular resident but did not want to wait for someone else to arrive to help her. The resident fell and hit her head requiring treatment from a medical provider. The claimant was suspended while the Department of Inspections and Appeals performed an investigation. The employer suspended the claimant as part of her discipline for failing to follow the transfer rules. In a written statement submitted as part of the employer's exhibits, the claimant admits that she did not follow the employer's transfer policies.

The claimant has claimed and received unemployment insurance benefits after the suspension from employment.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for a disqualifying reason.

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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

The claimant was suspended for failing to follow the employer's transfer rules and policies. As a result of the claimant's failure to follow the rules, a resident was injured in a fall and required medical treatment. The claimant's action, that is failing to wait for assistance in transferring the resident, is sufficient misconduct to justify the suspension. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 6, 2006, reference 03, decision is reversed. The claimant was suspended from employment for a disqualifying reason. Benefits are denied. The claimant is overpaid benefits in the amount of \$644.00.

tkh/kkf