

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE K TROTTER**  
Claimant

**APPEAL NO: 08A-UI-04673-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 04/13/08 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Five Star Quality Care (employer) appealed a representative's May 5, 2008 decision (reference 02) that concluded Nicole Trotter (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 2, 2008. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Nancy Dzinic, Director of Nursing, and Rita Rurscell, Staffing Coordinator. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 23, 2007 as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on October 23, 2007. The employer talked to the claimant about her attendance issues at her 90-day evaluation on January 14, 2008. On February 18, 2008, the employer issued the claimant a verbal warning for attendance issues. The claimant was absent due to illness one day, due to a sick school-age child one day and due to a court appearance on another day. On February 12, 2008, the claimant did not appear for work or notify the employer of her absence.

On April 10, 2008, the claimant did not appear for the two shifts she was assigned and did not notify the employer of her absence. The claimant was absent without notice again on April 11, 2008. The employer did not hear from the claimant until the end of April 2008. The claimant wanted to know if she could have her job back. Continued work was available had the claimant not stopped appearing for work.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by the claimant's actions. The claimant stopped appearing for work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. 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.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

## **DECISION:**

The representative's May 5, 2008 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the

claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,119.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs