

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

LEDELL I PENN
2856 BROWNE ST
OMAHA NE 68111

FIVE STAR QUALITY CARE INC
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-07870-CT
OC: 06/19/05 R: 12
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(1) – Voluntary Quit

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. filed an appeal from a representative's decision dated July 21, 2005, reference 02, which held that no disqualification would be imposed regarding Ledell Penn's separation from employment. After due notice was issued, a hearing was held by telephone on August 19, 2005. Ms. Penn participated personally and offered additional testimony from Carl Rodriguez. The employer participated by Denise Kruger, Director of Nursing, and Glenna Pullen, Assistant Director of Nursing.

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. Penn was employed by Five Star Quality Care, Inc. from March 24 until June 22, 2004 as a full-time certified nursing assistant. On June 15, she gave a verbal two week's notice that she was quitting but did not state a reason. On that date, she attempted to bathe a resident but the resident declined. Therefore, Ms. Penn asked another assistant to bathe the resident. The resident told the other assistant that Ms. Penn had refused to bathe her, to which Ms. Penn responded by calling the resident a liar. The other assistant became angry that she had to bathe the resident. As a result of that incident, Ms. Penn decided to quit. She had not put the employer on notice that she was thinking about quitting because of any work-related matters.

Ms. Penn was discharged prior to the effective date of her resignation. The decision to discharge was based, in part, on her conduct in calling the resident a liar on June 15. The decision was also based on an allegation from a resident that Ms. Penn failed to provide or offer cares to her.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Penn was separated from employment for any disqualifying reason. It is undisputed that she was discharged on June 22, 2004. It is also undisputed that she had given two week's notice on June 15, 2004. Ordinarily, where an individual is discharged prior to the effective date of resignation, benefits are allowed from the last day worked until the effective date of the resignation. However, Ms. Penn did not claim job insurance benefits between June 22, 2004, the date of discharge, and June 29, 2004, the date on which her resignation would have been effective. She did not file a claim for benefits until June of 2005. Therefore, she was unemployed at that point because she had quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Penn quit because of the conduct of her coworker on June 15, 2004. However, she made no real effort to address her concerns with management before quitting. She never notified the employer that she planned to quit if certain work-related problems were not corrected. Therefore, she deprived the employer of the opportunity to address her conflicts with coworkers before she quit. As such, those issues do not constitute good cause attributable to the employer for quitting.

For the reasons stated herein, it is concluded that Ms. Penn is not entitled to job insurance benefits. No overpayment results from this reversal as she has not received benefits since filing her claim.

DECISION:

The representative's decision dated July 21, 2005, reference 02, is hereby reversed. Ms. Penn voluntarily quit her employment effective June 29, 2004 for no good cause attributable to the employer. 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.

cfc/tjc