

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

CHRIS JACK  
505 N HAZEL #3  
GLENWOOD IA 51534

FIVE STAR QUALITY CARE INC  
c/o TBT ENTERPRISES  
PO BOX 848  
GAITHERSBURG MD 20884

Appeal Number: 04A-UI-08822-CT  
OC: 07/18/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. filed an appeal from a representative's decision dated August 11, 2004, reference 01, which held that no disqualification would be imposed regarding Chris Jack's separation from employment. After due notice was issued, a hearing was held by telephone on September 8, 2004. The employer participated by Erica Simpson, Supervisor, and Darlene Brown, Human Resources. Exhibits One, Two, and Three were admitted on the employer's behalf. Mr. Jack did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Jack was employed by Five Star Quality Care, Inc. from July 10, 2001 until July 6, 2004. He was employed as a direct support professional in the employer's facility for mentally handicapped adults. He was last employed on an as-needed basis.

Mr. Jack was discharged after he failed to give notice of two absences. The employer's policy, of which Mr. Jack was aware, provides for discharge if an individual accumulates two unreported absences within a 12-month period. Mr. Jack was absent without calling in on January 20, 2004 and, as a result, received a written warning on January 21, 2004. He was advised at that time that the next incident of such conduct would result in termination. Mr. Jack was again absent without calling in on July 1, 2004 and was notified of his discharge on July 6, 2004. The above matters constituted the sole reason for the discharge.

Mr. Jack has received a total of \$360.00 in job insurance benefits since filing his claim effective July 18, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Jack was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Jack was discharged because of his unreported absences of January 20 and July 1, 2004. He was clearly on notice after the first such absence that the next unreported absence would result in his discharge. Mr. Jack did not participate in the hearing to offer an explanation as to why he failed to contact the employer on either date. He did not offer any explanation on the written warning forms given him by the employer.

The administrative law judge concludes that Mr. Jack's two unreported absences during a period of approximately six months constituted a substantial disregard of the employer's standards and is sufficient to establish disqualifying misconduct. Accordingly, benefits are denied. Mr. Jack has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

#### DECISION:

The representative's decision dated August 11, 2004, reference 01, is hereby reversed. Mr. Jack was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Jack has been overpaid \$360.00 in job insurance benefits.

cfc/tjc