

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MISTY D KIGHT**  
Claimant

**APPEAL NO. 08A-UI-08194-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 08/03/08 R: 01  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Five Star Quality Care, filed an appeal from a decision dated September 4, 2008, reference 01. The decision allowed benefits to the claimant, Misty Kight. After due notice was issued, a hearing was held by telephone conference call on September 29, 2008. The claimant participated on her own behalf. The employer participated by Human Resources Assistant Darlene Brown and Administrator Eric Seitz. Exhibits A, B, and C and were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Misty Kight was employed by Five Star from May 28, 1996 until July 25, 2008 as a full-time direct support professional. On July 24-25, 2008, the claimant was working the night shift from 9:45 p.m. until 6:15 a.m. Another staff member, Kyle, was assigned to Hallway 1A which is an area which requires an employee to be present at all times. Kyle asked the claimant to cover for him while he was on break beginning at 4:50 a.m. Ms. Kight stood by the fire doors and watched the hallway until Kyle returned at 5:02 a.m.

During her time there she observed a client leave his room, walk past the lounge, then turn around and go into the lounge. There he stayed until Kyle returned and the claimant went on to other duties. The client was discovered missing around 5:15 a.m. and a search was instituted. Another employee, driving in to work, called and reported the client was in a park about six-tenths of a mile from the facility. She stayed with him until others could arrive from the facility to escort the client back. The client had stumbled on a curb and injured his knee while he was outside the facility.

An investigation was done by Human Resources Assistant Darlene Brown and Administrator Eric Seitz. The claimant stated she had not walked the hallway but had been at the fire doors, which were open, during the entire time Kyle had been on break. She did not see the client go anywhere except into the lounge. She was discharged at the end of the investigation for

violating company rules which prohibit any activity which results in danger, damage, or loss of property to residents, relatives, visitors, employees or the location.

**REASONING AND CONCLUSIONS OF LAW:**

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer discharged the claimant for conduct which resulted in the client injuring himself when he eloped the facility. This is based on the assertion the claimant was not on Hallway 1A as she should have been, which is when the client left. However, there is nothing in the record to support the employer's contention the claimant was negligent. Ms. Kight's testimony was that she was at the doorway of Hallway 1A during the entire time she covered Kyle's break, could see the entire hallway, and the client did not leave the facility while she was there. This has not been rebutted by any eyewitnesses presented by the employer. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982) and it has not met that burden in the present case. Disqualification may not be imposed.

**DECISION:**

The representative's decision of September 4, 2008, reference 01, is affirmed. Misty Kight is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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