

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH L ALTER**  
Claimant

**APPEAL NO. 11A-UI-12885-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 08/28/11  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Five Star Quality Care filed a timely appeal from an unemployment insurance decision dated September 21, 2011, reference 01, that allowed benefits to Deborah L. Alter. After due notice was issued, a telephone hearing was held October 20, 2011 with Ms. Alter participating. Director of Nursing Bekki Hohoenthaner and Assistant Director of Nursing Juanita Gerst participated for the employer. Employer Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Deborah L. Alter was employed by Five Star Quality Care Inc. from March 4, 2006 until she was discharged August 29, 2011. She last worked as a certified nursing assistant. In mid August, residents and Ms. Alter's coworkers raised complaints of Ms. Alter's "confusion." Some of the residents expressed fear at having Ms. Alter move them or provide cares. After reviewing the complaints and interviewing staff and residents, Director of Nursing Bekki Hohoenthaner discharged Ms. Alter on August 29, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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 has the burden of proof. See Iowa Code section 96.6-2. Although misconduct is most often found in deliberate actions contrary to an employer's interests, it may also be found in repeated acts of carelessness or negligence. On the other hand, poor performance as a result of lack of skills or medical conditions are not considered to be misconduct.

The evidence in the record creates a picture of an employee whose skills are deteriorating because of personal and family health matters rather than one who is deliberately providing poor service or providing those services carelessly or negligently. The administrative law judge concludes that the most plausible explanation for the events leading to discharge was a deterioration of Ms. Alter's skills to the point that she could no longer provide them in a manner acceptable to the employer. While this is a perfectly legitimate reason for a discharge, it does not constitute a discharge for misconduct. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated September 21, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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