

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KYLE L DAVIS**

Claimant

**APPEAL NO. 11O-UI-14035-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**

Employer

**OC: 07/17/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Five Star Quality Care (employer) appealed a representative's August 5, 2011 decision (reference 01) that concluded Kyle Davis (claimant) was discharged and there was no evidence of willful or deliberate misconduct. Administrative Law Judge Steven Wise issued a decision on September 9, 2011, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on October 25, 2011. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 29, 2011. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Darlene Brown, human resource assistant, and James Westphal, director of program treatment. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 10, 2007 as a full-time direct support professional. The claimant signed for receipt of the employer's handbook on October 13, 2008. The employer issued the claimant three written warnings regarding attendance. The employer notified the claimant that further infractions could result in termination from employment.

At approximately 5:00 a.m. on July 11, 2011, the claimant was called to a client's room to assist other employees with a client who was displaying harmful behavior. The claimant understood that the client had thrown chairs and was behaving aggressively. Other staff moved the client into the room and onto the bed. They were holding arms and hands down, trying to calm the client. The claimant was asked to assist them and he did without consulting the care plan. The claimant was unaware that the client's care plan indicated that the client was not to be restrained.

The claimant assumed the staff assigned to the client would document the incident and ask for his input. He returned to a client assigned to him who was exhibiting an inappropriate behavior, cared for the client, and documented the behavior of this client. It was then time for the claimant to leave work. He forgot to document the 5:00 a.m. incident. Later that day, the employer called and suspended the claimant. On July 18, 2011, the employer terminated the claimant for failure to treat a client respectfully, follow the support plan, inappropriate transport technique, and restraint.

**REASONING AND CONCLUSIONS OF LAW:**

The Reasoning and Conclusions of Law of the administrative law judge in appeal 11A-UI-10614-SWT are adopted and incorporated herein as if set forth at length.

**DECISION:**

The representative's August 5, 2011 decision (reference 01) is affirmed. The employer has not met its burden proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw