

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

KAREN J ROBERTS
806 N 35TH ST #24
COUNCIL BLUFFS IA 51501

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

Appeal Number: 05A-UI-03009-DWT
OC: 02/13/05 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, 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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. (employer) appealed a representative's March 15, 2005 decision (reference 01) that concluded Karen J. Roberts (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2005. The claimant participated in the hearing. Darlene Brown, Connie Moore and Susan Osler appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

On October 21, 2002, the employer hired the claimant to work as a full-time employee. On November 15, 2004, the claimant requested her employment status change from full-time to casual. In November 2004 the claimant agreed to work every Tuesday from noon to 8:30 pm.

The claimant did not work for the employer after December 7, 2004. The employer sent the claimant a letter on December 30, 2004, which informed the claimant she needed to contact the employer by January 13, 2005, to let the employer know if she was willing to meet the conditions of a casual employee. The conditions of casual status employment required the claimant to work every Tuesday from noon to 8:30 p.m. and to work a minimum of 24 hours a week.

The claimant contacted the employer the week of January 2, 2005. The claimant informed the employer she had to go to the hospital. The employer did not know how long the claimant would be hospitalized and asked her to contact the employer when she was released. The claimant was released from the hospital on January 8, 2005. The claimant understood she was released to return to work as of January 8, 2005.

The claimant contacted the employer again on January 12, 2005, or shortly thereafter. When the claimant talked to the employer this time, the claimant had moved or planned to move in with her daughter. The claimant's vehicle was not reliable and the claimant did not have a way to get to work, which was 18 miles from her daughter's home. After the employer learned the claimant did not plan to return to work, there was no need for the claimant to sign the paperwork the employer sent to her on December 30, 2004.

The claimant established a claim for unemployment insurance benefits during the week of February 13, 2005. The claimant filed claims for the weeks ending February 19 through April 9, 2005. The claimant received or was entitled to receive a total of \$1,032.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence establishes that the claimant quit her employment after she was released from the hospital and moved in with her daughter. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant quits without good cause when she quits because she does not have transportation to work or has moved. 871 IAC 24.25(1), (2). The evidence does not show

that the employer discharged the claimant. Instead, the employer kept the claimant's job open until the claimant's doctor released her to return to work. After the claimant was released to work, the claimant indicated she could not continue to work because she lived too far from work and did not have reliable transportation. The claimant had compelling personal reasons for quitting. For unemployment insurance purposes, the claimant quit for reasons that do not qualify her to receive unemployment insurance benefits. As of February 13, 2005, the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 19 through April 9, 2005. She has been overpaid \$1,032.00 in benefits she received for these weeks.

DECISION:

The representative's March 15, 2005 decision (reference 01) is reversed. The employer did not discharge the claimant. Instead, on or about January 12, 2005, the claimant voluntarily quit her employment without good cause attributable to the employer. The claimant is disqualified from receiving unemployment insurance benefits as of February 13, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 19 through April 9, 2005. The claimant has been overpaid and must repay \$1,032.00 in benefits she received for these weeks.

dlw/pjs