

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

KELLEY A ARNOLD
1053 YELLOW ROSE AVE
LORIMOR IA 50149

FIVE STAR QUALITY CARE INC
c/o THOMAS & THORNGREN INC
PO BOX 280100
NASHVILLE TN 37228

Appeal Number: 06A-UI-05542-DWT
OC: 04/30/06 R: 03
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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. (employer) appealed a representative's May 16, 2006 decision (reference 01) that concluded Kelley A. Arnold (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 June 14, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate at the hearing. As a result, no one represented the claimant. April Hughes, a human resource representative; Ann Hoadley, the business manager and certified nursing assistant; Ann Ott, the director of nurses; and Tim Perry, the administrator appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the

administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 21, 2005. The claimant worked as a full-time certified nursing assistant.

During her employment, the claimant received a verbal and a written warning. On March 2, the employer gave the claimant a verbal warning. On March 20, the claimant received a written warning. The employer gave the claimant the written warning after she had been asked to clean up a spill on the dining room floor. When the claimant refused, another employee cleaned the spill. After the employee wiped up the spill, the claimant took a glass of juice and deliberately poured it on the floor. The claimant did this because she was mad. The employer warned the claimant that if she again acted in this manner, she could be discharged.

On April 9, an off-duty employee brought a resident back to the facility after the resident attended a bridal shower. The claimant had just left Hoadley's office asking Hoadley to help because the claimant could not do all the work that day without some assistance. The returning resident needed to use the restroom so the off-duty employee asked the claimant to take the resident to the restroom. The claimant responded that she did not have time to take the resident to the restroom and then walked away. The claimant went on her break and smoked a cigarette. Hoadley heard the claimant's comments. The resident's son-in-law was upset at the way in which the claimant treated the resident. Other employees took the resident to the restroom.

When the employer talked to the claimant about this incident on April 11, the claimant provided no reason as to why she responded in the way she had on April 9.

The State of Iowa also investigated this incident. The State investigator concluded the claimant's conduct showed a disregard of the resident's dignity, which was not acceptable.

After the employer completed the investigation, the employer discharged the claimant for the April 9 incident on April 28, 2006 and because the claimant had received a March 20 warning for a similar issue – disregarding her co-workers.

The claimant established a claim for unemployment insurance benefits during the week of April 30, 2006. The claimant filed claims for the weeks ending May 6 through 27, 2006. The claimant received her maximum weekly benefit amount of \$324.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material

breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

A preponderance of the evidence indicates the claimant was busy on April 9 and asked for assistance. Even though the claimant was busy, her conduct that day toward a resident amounts to an intentional and substantial disregard of the employer's interests. This is especially true since the employer had already warned the claimant about inappropriate conduct and the claimant immediately took on a cigarette break instead of helping the resident go to the restroom. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 30, 2006, the claimant is not qualified to receive unemployment insurance 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 benefits for the weeks ending May 6 through 27, 2006. The claimant has been overpaid \$1,296.00 in benefits.

DECISION:

The representative's May 16, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of April 30, 2006. 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 benefits for the weeks ending May 6 through 27, 2006. The claimant has been overpaid and must repay a total of \$1,296.00 in benefits she received for these weeks.

dlw/cs