

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTEEN J FORBES
Claimant

APPEAL NO. 11A-UI-12645-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

**OC: 08/21/11
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated September 14, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 18, 2011. Claimant participated. The employer participated by Ms. Darlene Brown, Human Resource Assistant, and James Westphal, Director.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Kristeen Forbes was employed by Five Star Quality Care, Inc. as a full-time direct support worker from September 10, 2008 until July 18, 2011 when she was discharged from employment. Claimant was paid by the hour. Her immediate supervisor was Judy England.

The claimant was discharged from the facility that provides care to mentally handicapped individuals based upon Ms. Forbes' failure to document in any manner an incident that had taken place on the evening on or about July 18, 2011.

On that date a resident had become difficult to manage and combative and had to be placed in a form of restraint in a wheelchair for transportation. Because of the resident's combative behavior it became necessary to attempt to contain the resident resulting in the resident suffering a black eye.

Facility policy requires that employees who are involved in confrontational situations or unusual circumstances with residents document the incident for the protection of the employee, the resident, and the facility. Ms. Forbes is aware of the requirement that incidents be documented but did not do so.

It is the claimant's position that although she knew that the matter should have been documented, she planned on doing so in the future after she talked to her supervisor. Claimant did not document the incident before leaving at the end of her shift on the day in question.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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 in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in this case establishes that policy required employees to document unusual situations or combative behavior on the part of residents that required intervention. Claimant

was aware of the policy and had followed it in the past. During the night in question a resident became unmanageable and combative requiring the resident to be restrained and resulting in the resident having a black eye.

Although the claimant was aware that this was a notable event that needed to be documented, she did not do so. The claimant's failure to document the incident subjected the claimant, the resident and the facility to risk. Ms. Forbes provided no reasonable explanation for failing to document the incident before the end of her shift. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 14, 2011, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs