

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH J HRBEK
Claimant

APPEAL NO. 08A-UI-11150-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 10/26/08 R: 01
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. filed an appeal from a representative's decision dated November 20, 2008, reference 01, which held that no disqualification would be imposed regarding Joseph Hrbek's separation from employment. After due notice was issued, a hearing was held by telephone on December 15, 2008. The employer participated by Darlene Brown, Human Resources Assistant, and Gary Ring, Laundry/Housekeeping Supervisor. Exhibits One, Two, and Three were admitted on the employer's behalf. Mr. Hrbek did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. Hrbek was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hrbek was employed by Five Star Quality Care, Inc. from November 28, 2006 until May 27, 2008. He was employed full time in housekeeping. He clocked in at 1:30 p.m. for the start of his shift on May 27 and then clocked out at 2:24 p.m. He did not tell anyone he was leaving. He has not returned to work or contacted the employer at any point after May 27, 2008.

Mr. Hrbek had not complained about any matters prior to his separation. Continued work would have been available if he had continued reporting to work or had notified the employer of his intentions. He filed a claim for job insurance benefits effective October 26, 2008. He has received a total of \$1,194.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Hrbek voluntarily quit when he abandoned his job on May 27, 2008. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Hrbek did not participate in the hearing to explain why he left work and failed to return. The evidence of record does not establish any good cause attributable to Five Star Quality Care, Inc. for the separation. As such, benefits are denied.

Mr. Hrbek has received benefits since filing his claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Mr. Hrbek will be required to repay benefits already received.

DECISION:

The representative's decision dated November 20, 2008, reference 01, is hereby reversed. Mr. Hrbek quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Hrbek will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs