

**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**

**MARY A FRIES
2065 NASH BLVD #KK3
COUNCIL BLUFFS IA 51501**

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

**Appeal Number: 04A-UI-09641-DWT
OC: 08/15/04 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 are 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 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Five Star Quality Care, Inc. (employer) appealed a representative's September 1, 2004 decision (reference 01) that concluded Mary A. Fries (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 12, 2004. The claimant participated in the hearing. Susan Osler and Bob Lidgett 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?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 14, 2002. The claimant worked as a full-time a.m. daily program specialist. Lidgett was the claimant's supervisor.

In late July 2004, the claimant asked a co-worker, K.R., if she thought the claimant had hit one of her residents. K.R. indicated that if she thought the claimant had abused any of her residents, she and the claimant would be fighting. The employer investigated the incident involving the claimant and the resident. The employer did not find any problems with the way in which the claimant interacted with the resident. The claimant took a week off from work in an attempt to let talk and other potential problems settle down at work.

On August 2, the claimant called the employer's facility. Other employees told the claimant that K.R. had been making derogatory comments about her. K.R. answered the phone and the claimant asked K.R. why she was making nasty comments about the claimant. The claimant swore at K.R. K.R. swore back at the claimant and told her to die before she hung up on the claimant. On August 3, the claimant reported that K.R. threatened and harassed her.

The employer obtained some statements from employees. On August 3, the employer gave K.R. a written warning for threatening or intimidating the claimant. The employer also told the claimant to review the employer's policy on treating others with respect. The employer indicated the claimant would watch a film for this.

On August 4, the claimant reported to work and discovered K.R.'s daughter, C., was working in the same room as the claimant. The claimant concluded C. gave the claimant an attitude when she slammed a door. The claimant and C. engaged in a verbal confrontation after C. indicated the claimant was not doing her work. The claimant complained to her supervisor that she was having problems with C. and did not want to work with her anymore. The claimant did not want to work with employees who retaliated against her. The employer allowed the claimant to leave work early on August 4 because of problems she had with C. that day.

On August 4 other employees reported that the claimant made derogatory remarks about the p.m. staff and how lazy they were. The employer planned to give the claimant a written warning for failing to treat co-workers with respect. The employer also decided the claimant and C. would no longer work in the same room. On August 5, the claimant was scheduled to report to work. The claimant did not work because her child was ill. She called the employer on August 5 to report she was unable to work as scheduled.

The claimant decided on August 6 she would not return to work because she was frustrated and was not satisfied with the way in which the employer handled her complaints. The claimant did not tell the employer she was resigning. Instead, the claimant did not report to work again.

The claimant established a claim for unemployment insurance benefits during the week of August 15, 2004. The claimant filed claims for the weeks ending August 21 through October 16, 2004. She received her maximum weekly benefit amount of \$208.00 during each

of these weeks. (Some of these weeks the claimant did not receive any benefits because the benefits she was entitled to receive was used to offset a previously established overpayment.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant quit her employment as of August 6, 2004, when she decided to quit and did not again report to work. 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 has voluntarily quit with good cause when she quit because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The claimant quit because she was frustrated with the comments some co-workers made about her or heard they had made about her. The claimant may have a legitimate reason to be frustrated and upset about comments employees allegedly made about her. However, as soon as the employer learned about the problem, the employer took reasonable and responsible action immediately. For example, the claimant complained about K.R. on August 2 or 3 and the employer gave K.R. a written warning on August 3. The next day, the claimant again became upset when she had to work with K.R.'s daughter, who told the claimant she was not doing her job with a resident. When the claimant reported the confrontation she had with K.R.'s daughter, the employer knew the claimant was upset and allowed her to go home early. Again, the employer was going to make sure the claimant did not work with either K.R. or her daughter again, but the claimant did not return to work after August 4. The claimant quit without giving the employer an opportunity to address her concerns that developed on August 4, 2004.

The claimant established compelling personal reasons for quitting. The claimant did not, however, establish that she quit for reasons that qualify her to receive unemployment insurance benefits. As of August 15, 2004, 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 unemployment insurance benefits during the week ending August 21 through October 16, 2004. She has been overpaid a total of \$1,872.00 in benefits she received for these weeks.

DECISION:

The representative's September 1, 2004 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of August 15, 2004. 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 has been overpaid and must repay \$1,872.00 in benefits she received for the weeks ending August 21 through October 16, 2004.

dlw/kjf