

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN M PINEGAR**  
Claimant

**APPEAL NO: 11A-UI-07349-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 04/17/11**

**Claimant: Respondent (4/R)**

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Five Star Quality Care, Inc. (employer) appealed a representative's May 25, 2011 decision (reference 02) that concluded Shawn M. Pinegar (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 1, 2011. The claimant participated in the hearing. Lori Piziali appeared on the employer's behalf. One other witness, Robin Simkins, was available on behalf of the employer but did not testify. 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.

**ISSUE:**

Did the claimant voluntarily quit for a disqualifying reason?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 9, 2010. He worked full time as a certified nursing assistant (CNA)/certified medications aide at the employer's Des Moines, Iowa long-term care nursing facility. His last day of work before subsequently returning to work was February 16, 2011.

On February 17 the claimant called in and reported that he would be absent for about three weeks due to having a surgery on his toe. He did not pursue obtaining a leave of absence to cover the absence. Rather, on February 23 he turned in a letter indicating he was resigning his full time position, but that he wished to be placed on PRN (*Pro re nata* – commonly used in medicine to mean "as needed") status.

On February 21 the claimant had accepted and soon after began employment with another employer, working about 32 hours per week, which that employer considered full time. The claimant determined to accept and work that employment as the work at that employer would not interfere with his work restrictions; those restrictions would have initially prevented the claimant from performing his normal work duties for the employer. He initially had some thought of only working at the new employer until he was released for full time work.

The claimant obtained a full doctor's release on April 15, effective April 7. Prior to April 20 the claimant had not worked any shifts for the employer even on the PRN basis as he had not been available for any shifts offered. The claimant's employment with his new employer ended on or about April 20. Prior to April 23 the claimant had not sought to return to the employer on a full time basis. On or about April 23 the claimant sent a message to Ms. Piziali, the director of nursing, indicating he could now return to work on a full time status. However, at that time the employer did not have full time work available for the claimant. The employer did start scheduling and the claimant did start working PRN shifts as of about April 23.

The claimant started a full time college program on or about June 22. He indicated that he has applied for Department Approved Training (DAT) status; as of the date of the hearing, no DAT status had been approved. On June 29 or June 30 the employer contacted the claimant and offered him a full time position. The claimant declined due to his class schedule.

#### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for a non-disqualifying reason. Iowa Code § 96.5-1. Where a claimant has various reasons for leaving employment, all reasons must be considered in determining whether any of those reasons alone or in combination were a non-disqualifying reason. Taylor v. IDJS, 362 N.W.2d 534 (Iowa 1985). The claimant asserted that he had been advised by medical professionals to quit the employment with the employer. However, he did not provide medical documentation to that effect. Further, given that the claimant was subsequently released by his doctors as being able to return to work with the employer only about seven weeks later, it appears more likely that any medical advice was simply not to perform his regular job duties for a temporary period of time, for which the claimant did not pursue a leave of absence. It is also noteworthy that the claimant did not seek to return to the employer on a full time basis until over two weeks after the effective date of his release for full time work, not until after his employment with his other new employer had ended.

One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. However, under these circumstances the employer's account is also not subject to charge.

The administrative law judge concludes that a substantial reason that the claimant voluntarily quit was in order accept and enter into other employment. The claimant is not disqualified from receiving benefits as a result of his quit from the employer in this case, but the employer's account will not be charged.

An issue as to whether the claimant's refusal of an offer of full time work from the employer on June 29 or June 30 might be disqualifying or whether the claimant is sufficiently able and available for work due to his educational program arose during the hearing. These questions will be affected by any pending determination on an application for DAT. These issues were not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on those issues. 871 IAC 26.14(5).

**DECISION:**

The representative's May 25, 2011 decision (reference 02) is modified in favor of the employer. The claimant voluntarily left his employment, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the work refusal and able and available issues.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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