

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANNY T MENDEZ-PATTERSON**  
Claimant

**APPEAL NO. 15A-UI-00140-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 11/30/14  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Danny Mendez-Patterson (claimant) appealed a representative's December 24, 2014 (reference 03) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Five Star Quality Care (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 29, 2015. The claimant participated personally. The employer participated by Amy Bushong, Human Resources Manager, and Tammy Bushong, Administrator.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 11, 2014 as a certified nurse's aide, working as needed. The claimant signed for receipt of the employer's handbook on April 11, 2014. The employer did not issue the claimant any warnings during his employment.

On October 26, 2014 the claimant was working in the dining room passing drinks to residents at mealtime. He needed hot water from the kitchen but the door was locked. Having the kitchen door locked was unusual. The claimant knocked on the door and the kitchen worker refused to open the door. She told the claimant he would have to wait because she was busy. The claimant usually entered the kitchen and retrieved hot water by himself. He returned to the resident and explained the situation. The resident expressed his discontent at the cost of staying in the facility and not being able to get his beverage.

The claimant took the concern to the charge nurse. The charge nurse did not offer to help. The claimant returned to the dining area. A late arriving resident appeared and requested milk. The claimant went to the kitchen door, knocked, and requested milk when the kitchen worker appeared. The kitchen worker told the claimant he would have to talk to the aide and then shut and locked the door. The aide was behind the locked door. The claimant returned to

the charge nurse. He said it was an unsafe work environment and he was being harassed. He asked if he could switch to a different area. She told him to return to work and the claimant replied that he would not because it was unsafe. Both the claimant and the charge nurse raised their voices. The charge nurse said she was calling the administrator and pushed the claimant out of the way into the medication cart. The claimant went back to the dining room to start serving food. He confined his communications to residents.

Later on October 26, 2014 the employer asked the claimant into a room to sign a document. The employer had interviewed a few of the workers from the claimant's shift but not the claimant. The claimant said it did not make any difference whether he signed the document or not, he would be fired. The claimant signed the document and left. The following day the employer did not ask the claimant any questions. The employer terminated the claimant over the telephone but did not tell him why he was terminated. At the appeal hearing the employer said the claimant was terminated for using inappropriate language in front of residents.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which he was terminated. The employer had statements that it did not provide to the Appeals Section. It provided the statements to the claimant with the names of the persons who made the statements redacted. The employer summarized those redacted statements at the hearing.

**DECISION:**

The representative's December 24, 2014 (reference 03) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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