

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNI KATES**  
Claimant

**APPEAL NO. 11A-UI-11442-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 07/24/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Five Star Quality Care, Inc. filed a timely appeal from an unemployment insurance decision dated August 23, 2011, reference 01, that allowed benefits to Donni Kates. After due notice was issued, a telephone hearing was held October 18, 2011 with Human Resources Assistant Darlene Brown participating for the employer. Employer Exhibit One was admitted into evidence. The claimant provided a telephone number. When the administrative law judge called that number the line disconnected. The administrative law judge tried the number twice with the same results. He was unable to leave a message for the claimant. There was no contact from the claimant after the scheduled start of the hearing. The administrative law judge takes official notice of agency benefit payment records.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Donni Kates was a direct support professional for Five Star Quality Care, Inc. from November 19, 2008 until she was discharged July 27, 2011. On July 24, 2011, Ms. Kates dragged a resident while screaming at the resident, "Quit acting like a baby!" Several co-workers reported the incident to the employer. Her words and actions violated company policy. On July 15, 2011, Ms. Kates had received a written warning for being argumentative with a training supervisor. She had been given a three-day suspension in December 2010 because of showing disrespect towards her co-workers. She has received unemployment insurance benefits since filing a claim effective July 24, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct. 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.

Since Ms. Kates did not participate, the employer's evidence has not been contradicted. The testimony and documentary evidence establish that Ms. Kates' behavior on July 24, 2011 was unprofessional and violated company standards. This incident viewed in the context of a recent warning and a suspension seven months prior to the discharge is sufficient to establish disqualifying misconduct. Benefits are withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of repayment of benefits is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated August 23, 2011, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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