

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA L MANLEY
Claimant

APPEAL NO. 08A-UI-08709-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 07/20/08 R: 04
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 September 19, 2008, reference 01, which held that no disqualification would be imposed regarding Tara Manley's separation from employment. After due notice was issued, a hearing was held by telephone on October 14, 2008. Ms. Manley participated personally. The employer participated by Becky Hohenthauer, Director of Nursing, and Jennifer Jennings, Care Plan Coordinator. Exhibits One through Six were admitted on the employer's behalf.

The hearing record was left open to allow the parties to present phone records. The parties were to notify the administrative law judge if there were problems obtaining the requested records. The employer submitted cell phone records from the nurse on call during the relevant times. Ms. Manley did not submit any documentation and did not notify the administrative law judge that she was having problems obtaining copies of her phone records. A voice message left for Ms. Manley on October 21 was not returned. The administrative law judge has concluded that she does not intend to submit phone records and closed the hearing record at 4:30 p.m. on October 22, 2008.

ISSUE:

At issue in this matter is whether Ms. Manley 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: Ms. Manley was employed by Five Star Quality Care, Inc. from April 3 until July 13, 2008 as a full-time certified nursing assistant. She was presumed to have quit after she was absent for three consecutive days without notice.

Ms. Manley called on July 9 and July 10 to report that she would be absent due to illness. She did not indicate she planned to be gone beyond July 10. When she had not reported to work or called by her 5:30 a.m. start time on July 11, Jennifer Jennings called her at 6:00 a.m. At that

time, Ms. Manley indicated she no longer worked there. She did not return to work at any point thereafter. Her only prior absences had occurred in May and were due to chemically induced hepatitis. The employer excused those absences. Ms. Manley had not received any warnings regarding attendance because her absences before July 9 had been excused by the employer.

Ms. Manley filed a claim for job insurance benefits effective July 20, 2008. She has received a total of \$2,210.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Ms. Manley either voluntarily quit to Ms. Jennings on July 11 or abandoned her job when she stopped reporting for available work as of July 11, 2008. It was her contention that the third shift nurse told her on July 11 that she would not have a job if she did not report for work that day. The employer disputed receiving such a call from Ms. Manley. Since the issue of whether she spoke to a nurse on July 11 was crucial to a determination in this case, the administrative law judge allowed Ms. Manley an opportunity to provide a copy of her phone records to establish that she did, in fact, contact the employer on July 11.

Ms. Manley did not provide the records or notify the administrative law judge that she was having a problem obtaining them. The administrative law judge could have subpoenaed the records if she had indicated she was having trouble obtaining them. She did not do so and did not return a message left by the administrative law judge on October 21. The permissible inference is that Ms. Manley did not provide the records because they would not have supported her contention that she called the employer on July 11. The employer did speak with her on July 11 but the conversation was based on a call placed to her by the employer after the start of her shift. At that time, Ms. Manley indicated she no longer worked there. Having concluded that she did not call the employer at 4:00 a.m. on July 11 as she testified, the administrative law judge must also conclude that she was not told by a nurse on July 11 that she had to come to work that day or she would not have a job. Therefore, her statement to Ms. Jennings at 6:00 a.m. could be construed as a voluntary quit.

The fact that Ms. Manley did not report for work after July 11 is further evidence that she intended to sever her employment relationship with Five Star. For the above reasons, her separation is considered a voluntary quit. 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). Having taken the position that she was discharged, Ms. Manley did not offer any reason why she would quit the employment. The evidence of record does not establish any good cause attributable to the employer for the separation. As such, she is not entitled to job insurance benefits.

Ms. Manley has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. 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 Ms. Manley will be required to repay benefits already received.

DECISION:

The representative's decision dated September 19, 2008, reference 01, is hereby reversed. Ms. Manley voluntarily quit her employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Manley will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs