

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET SNYDER
Claimant

APPEAL NO: 12A-UI-10633-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

**OC: 07/22/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 22, 2012, reference 01, that held the claimant was not discharged for misconduct on July 23, 2012, and benefits are allowed. A telephone hearing was held on October 1, 2012. The claimant participated. Alyce Smolsky, Representative, Jaime Losch, Manager, and Jose Torres, Supervisor, participated for the employer. Employer Exhibit 1 was received as evidence in addition to the department fact-finding documents.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on November 15, 2010, and last worked for the employer as a full-time site supervisor on July 23, 2012. She received the employer policies in an employee handbook. The Rules and Regulations state that a refusal to follow supervisor's instructions can result in employment termination.

Claimant worked one account at a K-12 school for the employer. The employer issued a written warning to claimant on April 12, 2012 in response to a customer complaint about classrooms/restrooms not being cleaned. She signed for the warning without comment. The employer issued claimant a further warning on July 2 in response to a customer complaint about doors not being locked, and a failure to complete all cleaning duties. The claimant did not deny the complaint but noted she did not work when the issues occurred. Claimant was on vacation from June 13-27. The warning advised claimant a failure to comply with the cleaning requirements could lead to employment termination.

The employer received an e-mail complaint on July 23 from the school contact person and an e-mail from a teacher about cleaning restroom cleaning that was not done. The employer

terminated claimant for failing to perform job duties in light of the prior warnings. The claimant's supervisor had recently acknowledged that she had done a good job.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on July 23, 2012.

The employer warning to claimant on July 3 is suspect because claimant had been gone on vacation for two weeks leading up to it. The warnings are not specific as to what cleaning duty or duties claimant or anyone she supervised failed to perform. Claimant offered a reasonable explanation about the most recent bathroom complaint of July 23.

DECISION:

The department decision dated August 22, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on July 23, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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