

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLEY K COLGATE

Claimant

APPEAL NO. 06A-UI-10980-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION

Employer

**OC: 10-15-06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 6, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 30, 2006. The claimant did participate. The employer did participate through Nora Winchester, Operations Manager and was represented by Jessica Meyer of Johnson & Associates. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cleaning specialist full time beginning November 19, 1996 through October 13, 2006 when she was discharged. The claimant had received a company handbook that prohibits disruptive behavior on the job.

The claimant was assigned to work as a janitor in a religious school. A parent overheard a personal conversation between the claimant and another teacher. The parent heard the claimant use profanity and speak of personal matters that she did not believe children in the school should be able to overhear. The parent was concerned that if she could hear the conversation, then so could the children attending the school. The parent complained to the principal who reported the incident to Ms. Winchester. Ms. Winchester went to the claimant to discuss with her the principal's report. Ms. Winchester attempted to give the claimant a write-up that detailed the claimant's infractions and the expectations for her in the future. The claimant refused to sign the write-up and told Ms. Winchester "I'm not signing this shit." At hearing the claimant admitted that she did use profanity when speaking to the teacher, but denied using any profanity when speaking to Ms. Winchester. The claimant admits she did not sign the write-up but because she could not read it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

"The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990).

The claimant knew or should have known that using profanity in a religious school setting was unacceptable conduct. The claimant was overheard by a parent who complained. When the employer attempted to discuss the matter with the claimant the claimant refused to sign the write up and again used profanity when speaking to her Supervisor. Her actions, that is using profanity in the school and when speaking to her supervisor is misconduct substantial enough to warrant disqualification from benefits. Benefits are denied.

DECISION:

The November 6, 2006, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs