

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSEPH G BECKER**  
Claimant

**FBG SERVICE CORPORATION**  
Employer

**APPEAL 16A-UI-13607-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/13/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 15, 2016, (reference 02) unemployment insurance decision that denied benefits based upon his discharge for dishonesty in connection with his work. The parties were properly notified of the hearing. A telephone hearing was held on January 13, 2017. The claimant Joseph Becker participated and testified. Also participating and testifying on behalf of the claimant was his non-attorney representative Mike Crane. The employer FBG Service Corporation participated through Hearing Representative Thomas Kuiper and witnesses Tom Montgomery and Lindsey Nissen. Employer's Exhibits 1 and 2 and claimant's Exhibits A and B were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a maintenance supervisor from September 17, 2009, until this employment ended on November 18, 2016, when he was discharged.

At the time of separation claimant was assigned to work with the employer's customer, Hawkeye Community College (Hawkeye). Claimant was also independently employed by Hawkeye Community. On September 22, 2016, claimant was given the task of writing up an auction description for a vehicle Hawkeye wanted to sell. In the description he wrote and submitted to Nissen, his supervisor at Hawkeye, claimant noted the vehicle had a slipping transmission. Claimant testified he based this description on information he received from the employee who last drove the vehicle. Neither that employee nor Nissen are mechanics. Claimant is a licensed mechanic. The item was posted and set for auction with a closing date of November 11, 2016. On November 10, 2016, claimant entered a bid of \$1,500.00 for the vehicle. After he entered his bid, claimant learned that the vehicle's transmission was actually in working order. On November 11, 2016, Nissen informed claimant he had the winning bid. Claimant did not tell Nissen he had since learned that the auction description was inaccurate, as

the transmission was in working order. Nissen only learned that the transmission was in working order when several employees reported to her that claimant was bragging about what a great deal he had gotten. Following his termination, Nissen found research in claimant's desk on the Kelly Blue Book value of the vehicle that led her to believe he had known the transmission was working prior to placing his bid. Claimant maintained he was not aware of this information until after he placed his bid.

Nissen also learned that on November 15, 2016, claimant took possession of a ladder rack that used to be on the vehicle and was set to be auctioned separately. Nissen explained, as a public entity, all property Hawkeye wishes to dispose of either has to be thrown away or auctioned off. Nissen also testified claimant was aware of this, as his capacity with Hawkeye required him to answer questions about this policy. Claimant admitted to being aware of Hawkeye's policy requiring items to be discarded or auctioned. Claimant testified he did not know the ladder rack was the property of Hawkeye and believed it to be the property of the employee who last drove the vehicle it was attached to. Claimant explained he believed this to be the case because the employee told him he could have the ladder rack. Claimant's employment from Hawkeye was subsequently terminated based on his dishonesty involving the vehicle auction and taking of the ladder rack. Hawkeye notified the employer of the situation, as it did not want to work with claimant any longer. Upon learning of claimant's dishonesty, the employer also terminated his employment.

#### **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. Benefits are denied.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The claimant has argued he was not dishonest about the auction item because he did not learn the truth about the transmission until after he placed his bid and that he was not aware the ladder rack was the property of Hawkeye and therefore subject to separate auction. Evidence was presented indicating claimant knew about the transmission prior to placing his bid and that he should have known taking the ladder rack violated Hawkeye's policies. Even if all credibility determinations are made in favor of claimant, he was still dishonest with Hawkeye when he failed to notify Nissen about the transmission immediately upon learning that it was in working order. Claimant's dishonesty broke the trust held between himself and the employer's client, causing the client to request not to work with him any longer. Such dishonesty is a deliberately disregarded of the employer's interest and a violation of company policy. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

**DECISION:**

The December 15, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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