

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAUDIA A GLOECKLER
Claimant

APPEAL NO. 11A-UI-00077-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

**OC: 11/07/10
Claimant: Appellant (3)**

Section 96.5-2-a – Discharge
871 IAC 24.32(9) – Suspension

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 27, 2010, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit work on November 11, 2010. After due notice, a telephone hearing was held on February 10, 2011. Although the claimant was provided notice, she was not at the telephone number provided. Messages were left at that number as well as the claimant's residence. There was no response by Ms. Gloeckler. The employer participated by Tom Kuiper, Hearing Representative, and witnesses Dennis Westendorf and Mr. Brent Groff.

ISSUE:

The issue is whether the claimant's suspension from work is considered a discharge under the provisions of the Iowa Employment Security Act.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Claudia Gloeckler was employed by FBG Service Corporation beginning in May 2009. The claimant continues to be employed as a full-time cleaning specialist at the time of hearing.

In November Ms. Gloeckler was suspended for a one-week period for violation of a company rule which prohibited employees from removing the property of clients even if the property of the client was to be discarded. Ms. Gloeckler was aware of the company rule and had been warned prior to the incident that caused her suspension. The claimant was suspended from work from the period of November 12, 2010 through November 19, 2010. Ms. Gloeckler returned to work after the suspension and was re-instated.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant is subject to benefit disqualification. She is.

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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The evidence in the record establishes that the claimant was suspended without pay for violation of a known company rule. The claimant had been warned and was suspended when she again violated the rule by removing client property from a client location. Under the provisions of 871 IAC 24.32(9), a claim was filed and the reason for the claimant's unemployment was the result of a disciplinary suspension imposed by the employer. Under the provisions of the law, the suspension is considered a discharge. The employer has sustained its burden of proof in showing that the claimant's suspension/discharge took place under disqualifying conditions. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount.

DECISION:

The representative's decision dated December 27, 2010, reference 01, is affirmed as modified. Claimant was suspended/discharged under disqualifying conditions. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs