

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**HUGH D SELLERS  
3201 AVE B  
COUNCIL BLUFFS IA 51501**

**FBG SERVICE CORPORATION  
C/o TALX UCM SERVICES INC  
PO BOX 6007  
OMAHA NE 68106**

**Appeal Number: 04A-UI-09523-DWT  
OC: 08/01/04 R: 01  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

FBG Service Corporation (employer) appealed a representative's August 30, 2004 decision (reference 01) that concluded Hugh D. Sellers (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 23, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Pamela Bloch, attorney at law, represented the employer. Dave Carey, the program manager, and Ruben Hernandez appeared on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 15, 2003. He worked as a full-time cleaning specialist. Herb Wolff was the claimant's supervisor. The employer provided cleaning services to business clients.

On July 26, Carey received a note from an employee at the business the claimant was assigned to clean. The employee reported he was missing a box that had bread, rolls and donuts in the box. Since this was the second time this had occurred, the employee expected the missing items back the next day.

After receiving the note, Carey started walking around the business client's facility. Carey saw the claimant eating items that had been identified as missing in the employee's report. The claimant told Carey he had found the box of items on top of the trash. The person who left the complaint for Carey identified the items the claimant was eating and in his possession as his missing items.

The employer's rules, which the claimant received on April 7, 2003, inform employees they can be discharged if the employee removes items from a customer's trashcan. The employer discharged the claimant on July 27 for violating the employer's rules by taking items from a customer even if the items were on top of a trashcan.

The claimant established a claim for unemployment insurance benefits during the week of August 1, 2004. He has not filed any weekly claims.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known the employer did not allow him or any employees to take any item from a customer even if the item was in a trashcan. The claimant's conduct at a customer's facility amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. Since the claimant did not participate at the hearing, the evidence establishes that the employer discharged him for reasons amounting to work-connected misconduct. As of August 1, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 30, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 1, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/tjc