

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY TOGBA
Claimant

APPEAL NO. 10A-UI-14373-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

OC: 09/19/10
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bobby Togba filed an appeal from a representative's decision dated October 15, 2010, reference 01, which denied benefits based on his separation from FBG Service Corporation (FBG). After due notice was issued, a hearing was held by telephone on November 29, 2010. Mr. Togba participated personally. The employer participated by Ellen Cooper, Internal Manager, and Tonya Weaver, Area Supervisor. The employer was represented by Tom Kuiper of Talx Corporation.

ISSUE:

At issue in this matter is whether Mr. Togba was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Togba was employed by FBG from May 21 until September 24, 2010 as a full-time janitor. He was assigned to work at Des Moines Area Community College (DMACC). He was discharged after DMACC requested his removal due to inadequate cleaning services.

Mr. Togba had to be reminded periodically that he had failed to perform certain cleaning tasks or had not performed them to the employer's standards. The employer described him as being "very cooperative" in re-doing work pointed out to him as below standards. On or about September 12, DMACC complained about tables and doors not being cleaned and trash not being properly disposed of. The employer spoke to Mr. Togba regarding the complaint. The only written warning he received was on August 4 when he was observed sleeping on a hallway bench during work hours. He completed his probation on August 21.

The decision to discharge Mr. Togba was due to a complaint the employer received from DMACC on or about September 21. Some of the restrooms did not have soap in its dispensers and the floors were not mopped. Some of the trash had not been properly disposed of. It was

requested that he be removed from the assignment and, therefore, FBG discharged him on September 22, 2010.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Togba was discharged because his cleaning did not meet standards. The administrative law judge does not believe he deliberately or intentionally failed to clean to the employer's standards. It appears that he had difficulty prioritizing his duties and allocating his time. Given the fact that he was "very cooperative" in re-doing problem areas, the administrative law judge believes he was making a good-faith effort to meet the employer's standards.

The only written warning Mr. Togba received was on August 4 and was due to an allegation that he was sleeping on the job. If the problem with his cleaning was as persistent as described by the employer, one would have expected him to have received a written warning regarding the conduct. However, he was retained after the probationary period in spite of sleeping on the job and in spite of whatever problems existed with his job performance. The administrative law judge believes Mr. Togba was at all times working to the best of his abilities.

On the evidence presented, it is concluded that the employer has failed to establish that Mr. Togba deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. The fact that he was an unsatisfactory employee is not a basis for disqualification. While the employer may have had good cause to discharge him, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated October 15, 2010, reference 01, is hereby reversed. Mr. Togba was discharged by FBG but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs