IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CANDIE GRIFFIN
Claimant

FBG SERVICE CORPORATION
Employer

APPEAL NO. 11A-UI-11314-WT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 7/31/11
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated August 24, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 11, 2011. Claimant claimed she had not received the hearing notice, so the matter was rescheduled for November 3, 2011. On that date, claimant participated personally. Employer participated by Tom Kuiper, Talx Representative. Exhibits A-B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds the following facts. Claimant last worked for employer on August 2, 2011. She was a full-time cleaning specialist. Claimant was discharged on August 3, 2011 by employer for taking excessive breaks.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

> (4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer’s policy concerning excessive breaks. Claimant was warned concerning this policy. The employer’s witness is found to be more credible than the claimant. The employer’s witness, Mike Miller, testified that claimant’s co-workers told him that Ms. Griffin was taking excessive lunch breaks. In response to the complaints, on August 2, Mr. Miller observed the claimant leave work at 11:35 a.m. He observed her return at 12:37 p.m. He then randomly pulled two days of video evidence and both dates demonstrated that claimant took longer than 30 minutes for her break.

Mr. Miller had also received independent verification in the form of a complaint that Ms. Griffin was wearing her badge at a truck stop which was 10 to 15 minutes away from the facility. Upon

cross-examination, Ms. Griffin conceded that she was at the truck stop that day. When the evidence is viewed as a whole, the weight of the evidence established that the claimant was taking excessive breaks and, further, that the claimant knew that this was a violation of the employer's reasonable work standards.

DECISION:

The fact-finding decision dated August 24, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The employer's account shall not be charged.

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Joseph L. Walsh
Administrative Law Judge

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Decision Dated and Mailed

jlw/pjs