

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

SABRIJA TALIC
7705 HICKMAN RD #32
URBANDALE IA 50322

THE CBE GROUP INC
PO BOX 900
WATERLOO IA 50701

Appeal Number: 05A-UI-04067-CT
OC: 05/09/04 R: 02
Claimant: Appellant (1)

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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sabrija Talic filed an appeal from a representative's decision dated April 13, 2005, reference 04, which denied benefit based on his separation from The CBE Group, Inc. After due notice was issued, a hearing was held by telephone on June 22, 2005. Mr. Talic participated personally. The employer participated by Mary Phillips, Senior Vice President for Human Resources; Cindy Gade, Director; Kim Passick, Senior Director of Operations; and Twila Sells, Supervisor. Exhibits One, Two, and Three were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Talic was employed by The CBE Group, Inc. from August 30, 2004 until March 24, 2005 as a full-time debt collector. He was discharged pursuant to a company policy that provides for termination if an individual receives three warnings within a one-year period of time. Mr. Talic received training at the time of hire as to what he could do and say in an effort to secure payment from debtors.

Mr. Talic received his first warning on December 2, 2004 after he questioned a debtor as to whether the debtor was a racist. The debtor was making comments regarding the fact that Mr. Talic, because of his accent, was from a different country. The debtor stated he had no business being in the United States. The debtor also suggested that Mr. Talic did not have a green card authorizing him to work in the United States. Mr. Talic told the debtor he was going to sue him, apparently because of the comments the debtor was making regarding his nationality. His conduct was considered harassment and, therefore, a violation of the Fair Debt Collection Practices Act (FDCPA). If a debtor is being verbally abusive to a collector, the collector is to thank the debtor and exit from the call.

Mr. Talic received his second warning on March 3, 2005 when he failed to meet his collection goal. He collected only 66 percent of his goal of \$7,000.00. The employer felt his failure was due to a language barrier that caused Mr. Talic frustration in his attempts to make collections. On March 24, Mr. Talic's calls were being monitored by Twila Sells, a supervisor. Ms. Sells noted that on two separate calls, Mr. Talic called the person he was speaking to a "liar." This was also considered harassment and a violation of the FDCPA. Because the conduct resulted in a third warning, Mr. Talic was discharged on March 24, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Talic was separated from employment for any disqualifying reason. 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). For reasons that follow, it is concluded that the employer has satisfied its burden of proof. Mr. Talic received training concerning the prohibitions imposed on the employer by the FDCPA. He was warned on December 2, 2004 that calling a debtor a "racist" was considered a form of harassment and, therefore, a violation of the FDCPA. The administrative law judge appreciates that Mr. Talic felt he was being abused by the debtor. However, his recourse was to either disconnect from the call or get assistance from someone else. He knew or should have known from the warning that any form of name-calling was prohibited. In spite of the warning, Mr. Talic called two separate individuals a "liar" on March 24, 2005. Whether he was speaking with a debtor or some other individual, he was attempting to collect a debt on behalf of his employer.

Mr. Talic's conduct had the potential of subjecting the employer to legal liability for violations of the FDCPA. His failure to abide by the standards for which he had received training and for which he had been warned constituted a substantial disregard of the employer's interests and standards. For the reasons cited herein, it is concluded that disqualifying misconduct has been established by the evidence. In concluding that misconduct has been established, the administrative law judge has not included Mr. Talic's failure to meet his goals. The evidence

failed to establish that his failure to make goal was the product of misconduct as that term is defined by law.

DECISION:

The representative's decision dated April 13, 2005, reference 04, is hereby affirmed. Mr. Talic was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/sc