

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

BRENDA L TAYLOR
1923 LUCAS ST
MUSCATINE IA 52761

FBG SERVICE CORPORATION
C/o JOHNSON & ASSOCIATES
NOW TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 05A-UI-05602-RT
OC: 01-02-05 R: 04
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, 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, FBG Service Corporation, filed a timely appeal from an unemployment insurance decision dated May 17, 2005, reference 05, allowing unemployment insurance benefits to the claimant, Brenda L. Taylor. After due notice was issued, a telephone hearing was held on June 14, 2005, with the claimant participating. The administrative law judge attempted to call Stacy Honts to be a witness for the claimant but was unable to reach her. Andy Carter was available to testify for the claimant but not called because his testimony would have been irrelevant, unnecessary, and repetitive. Charles Thompson, Area Manager, participated in the hearing for the employer. The employer was represented by Suzanna Ettrich of

Johnson & Associates, now TALX UC eXpress. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. At 3:16 p.m. on June 1, 2005, the claimant called and spoke to the administrative law judge about the hearing. She indicated that she might not want to participate in the hearing. The administrative law judge explained that the claimant could not withdraw the appeal because it was an appeal by the employer. The administrative law judge explained that the claimant did not have to participate in the hearing but it appeared to the administrative law judge that at least \$75.00 of unemployment insurance benefits was at stake. The claimant decided to participate in the hearing and did so.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time cleaning specialist from January 26, 2005 until she was discharged on April 28, 2005. The claimant was assigned to clean at the MidAmerican Louisa Power Plant in Muscatine, Iowa. The claimant was discharged for repeatedly and continually talking to MidAmerican employees about personal matters and about complaints about the employer despite the employer's policies prohibiting such discussion and the employer's warnings to the claimant about these kinds of discussions. Prior to April 25, 2005, the employer learned that the claimant was talking to MidAmerican employees including a security guard and a supervisor at MidAmerican, Lisa Calcert. Ms. Calcert even complained to the employer about the claimant. On April 25, 2005, the claimant received a verbal warning from the employer's witness, Charles Thompson, Area Manager, about these matters and, in particular, to stop talking to the MidAmerican employees and to concentrate on her work. The claimant was told at that time if she had problems with her work that she should consult Mr. Thompson or the employer's Human Resources. Despite this warning, the claimant continued to enter into inappropriate discussions with MidAmerican employees. Ms. Calcert then called the employer and asked that the claimant be removed from the assignment. Mr. Thompson went out to the claimant's location at MidAmerican and gave the claimant a written warning about these matters and her job performance. The claimant was informed that she would be transferred effective May 2, 2005 to Hon Industries. The claimant accepted this transfer. However, before the transfer was implemented, on April 27 and 28, 2005 the claimant persisted in continuing to talk to employees of MidAmerican and the employer received another phone call from Ms. Calcert demanding that the claimant be transferred immediately. The claimant was then discharged. Pursuant to her claim for unemployment insurance benefits filed effective January 2, 2005, and reopened effective May 1, 2005, the claimant has received unemployment insurance benefits in the amount of \$75.00 since her separation from the employer as follows: \$75.00 for benefit week ending May 7, 2005. For benefit week ending May 14, 2005, the claimant received no benefits reporting earnings sufficient to cancel benefits for that week. The claimant had benefits prior to her employment with the employer herein but they are not relevant here.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from the employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

The parties agree, and the administrative law judge concludes, that the claimant was discharged on April 28, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Charles Thompson, Area Manager, credibly testified that the claimant repeatedly continued to talk to MidAmerican employees, where she was assigned to clean, including complaining about her employment, all of which is prohibited by the employer's policies. Mr. Thompson credibly testified that he received a complaint from one of his supervisors at MidAmerican, Lisa Calcert, about the claimant's talking to MidAmerican employees. Mr. Thompson credibly testified that he gave the claimant a verbal warning on April 25, 2005 about these matters and further told the claimant that if she had problems with her employment or concerns about her employment she should contact him or Human Resources. The claimant's testimony to the contrary is not credible. The claimant was most equivocal about this warning. The claimant first said that she was only told to stop doing what she was doing. However, the claimant seemed to admit later that she had been told not to talk to MidAmerican employees. Then the claimant seemed to backtrack yet again. The claimant was most equivocal and this subverts her credibility. Mr. Thompson also credibly testified that the claimant persisted after the warning in talking to MidAmerican employees and he received yet another complaint from Ms. Calcert which caused him to go out to the location where the claimant worked and give the claimant a written warning about these matters. The claimant seemed to deny that this warning was about talking to employees but was rather about job performance but again her testimony is not credible as noted above. At that time the claimant was informed that she would be transferred effective May 2, 2005, which transfer was acceptable. Nevertheless the claimant persisted in talking to MidAmerican employees for the next two days and was discharged.

The administrative law judge is constrained to conclude in view of the employer's policies and the warnings from the employer that the claimant's persistent refusal to comply with the warnings and her continued discussions with MidAmerican employees about personal matters and her work were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are, at the very least, carelessness or negligence in such a degree of recurrence all as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$75.00 since separating from the employer herein on or about April 28, 2005 and reopening her claim for benefits effective May 1, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 17, 2005, reference 05, is reversed. The claimant, Brenda L. Taylor, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct. She has been overpaid unemployment insurance benefits in the amount of \$75.00.

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