

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS COPE**  
Claimant

**APPEAL NO: 09A-UI-00966-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBL FINANCIAL GROUP INC**  
Employer

**OC: 12-21-08**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 6, 2009, and continued March 13, 2009. The claimant participated in the hearing with Attorney Kurt Swaim. Shirley Hoveland, Senior Human Resources Specialist; Mark Martin, Business Center Claims Consultant; Steve Howard, Business Center Director; and Paul Sweton, Employer Attorney, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time senior field claim representative for FBL Financial Group from December 17, 1984 to December 16, 2008. The claimant received a written warning May 9, 2008, for failing to follow claims handling procedures such as timeliness and customer service issues. There were a number of situations where the claimant was short, rude, unpleasant and inflexible with agents and clients. A complaint was made about the claimant in April 2008 on a claim the claimant was assigned in December 2007 after a theft ring hit a modular building site over the Thanksgiving weekend. The agent did not tell the customer that the loss would not be covered because the home was not finished. The claimant took a poor statement and quickly denied the claim while making negative and demeaning statements to the insured such as he "should have been smart enough to read the policy" and he would have known he was not covered. The claimant also did not give the insured his rights and would not give him a timetable. The employer told the claimant that was just another example of his lack of consideration and professionalism that had been addressed before. The claimant handled one of the lowest case loads of any agent in eastern Iowa in 2007 even though the claimant stated he had a high workload. He had a number of cases pending but was at the bottom of the field as workload. He was also told he needed to deal with others in a better manner and take responsibility for his actions and that his performance and communication must be professional

or it would result in termination. The claimant signed the warning May 9, 2008. On August 27, 2008, he received a final written warning because the employer had "serious concerns" about his work production. He had the lowest count of claims for active field adjusters and because he was not getting his work done he was not being given more. The employer expected employees to keep their files on the diary computer system so if anyone needed to look at the claim there is documentation of what has been done. The claimant was warned about keeping up to date on the diary system when he received his written warning in May 2008. Of 88 claims the claimant had 42 without any activity since July 1, 2008, and only one had been placed on the diary system since the May warning. The claimant was specifically not assigned time consuming storm claims until he could catch up with his other claims. The employer told the claimant his job was in jeopardy if he did not take immediate steps to improve his performance and maintain his employment. The claimant's files of November 19, 2008, showed a notation that a lawsuit had been filed on a case the claimant was handling. The employer has 20 days to file a response to the lawsuit through their attorney or face paying more liability to pay the maximum on the claim. There were only a few days left when the employer accidentally discovered the situation and waited to see if the claimant would take action and he failed to do so although because the employer was aware of the matter it responded in a timely manner. At that point the claimant's diaries were fairly current but over half of his files were still late and/or without a diary entry. Other deficiencies included customer service and professional communication and during a tornado claim an insured told his agent that he felt like he should apologize to the claimant for having to work on his claim because of the way he was treated. After considering all of the information the employer terminated the claimant's employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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.

The claimant demonstrated a history of poor customer service and lack of professionalism on several occasions. Additionally, he did not carry a full caseload and was still behind and then failed to report a time sensitive lawsuit that had been filed. His documentation was lacking, his investigation was lacking and his files were lacking and there was no documentation of communication with insureds. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The January 12, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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