

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

JANE A WICKMAN  
626 BLUFF ST  
COUNCIL BLUFFS IA 51503

FBG SERVICE CORPORATION  
% TALX UC EXPRESS  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 04A-UI-04988-CT  
OC: 04/11/04 R: 01  
Claimant: Respondent (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

FBG Service Corporation (FBG) filed an appeal from a representative's decision dated April 27, 2004, reference 01, which held that no disqualification would be imposed regarding Jane Wickman's separation from employment. After due notice was issued, a hearing was held by telephone on May 25, 2004. Ms. Wickman participated personally. The employer participated by Joe McGee, Area Manager, and Dave Carey, Project Manager. The employer was represented by Kelly Davis, Attorney at Law. 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: Ms. Wickman began working for FBG in April of 2002 as a cleaning specialist. As of the date of separation on March 29, 2004, she was working approximately 30 hours per week. She was discharged from the employment because of her attendance.

On January 19, 2004, Ms. Wickman received a written warning regarding her attendance. On March 15, she was placed on probation for 30 days because of her attendance. The warning given at that time advised that she would be discharged if she was absent for one day during the probationary period. All of her absences had been due to illness and all had been properly reported to the employer. On March 29, Ms. Wickman was involved in an auto accident at approximately 5:30 p.m. She called Dave Carey as soon as she was able to get to a telephone. She indicated that she would not be in to work as a result of the accident. She indicated that although she was not injured, she was shaken up by the incident. Mr. Carey reminded her of the terms of her probation and advised her that she was terminated. He did not advise her that she needed to meet with someone in human resources.

The documentation Mr. Carey prepared on March 29 indicated that Ms. Wickman had been terminated from the account. The documentation indicated she was involuntarily terminated because of attendance in that she had violated the terms of her probation. Because she had been discharged on March 29, Ms. Wickman did not report for work or call in on March 30. She has consistently maintained at the fact-finding interview and during the hearing that she was discharged on March 29, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Wickman 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The administrative law judge has found herein that Ms. Wickman was discharged on March 29, 2004. She indicated during the fact-finding interview, before she had a copy of the documentation prepared by Mr. Carey on March 29, that she had been discharged on March 29. Her statement during the fact-finding interview is consistent with the information written by Mr. Carey on the documentation he prepared on March 29 in which he indicated that she had been discharged. She was not told that she had to meet with human resources or that she could be placed at an alternative job site. Because she had already been discharged, it was reasonable for Ms. Wickman to not report for work or call on March 30. It is concluded, therefore, that March 30 was not an unexcused absence.

An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. All of Ms. Wickman's absences are considered excused as they were all for reasonable cause and were properly reported. Although she did not timely report the absence of March 29, she had good cause for not doing so. She had been involved in an accident and had to locate a telephone in order to call the employer. It is true that Ms. Wickman was not injured in the accident and possibly could have worked on March 29 in spite of being shaken up

from the accident. However, this would establish, at most, only one unexcused absence. The administrative law judge does not consider this one unexcused absence, under the circumstances, to be sufficient to establish misconduct, the warning of March 15 notwithstanding.

Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge Ms. Wickman, conduct which 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, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated April 27, 2004, reference 01, is hereby affirmed. Ms. Wickman was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf