

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL WEDEKING

Claimant

APPEAL NO: 14A-UI-05806-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION

Employer

OC: 05/11/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 2, 2014, 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 June 27, 2014. The claimant participated in the hearing. Josh Langsted, Site Supervisor and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One was 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 janitorial worker for FBG Service Corporation from March 13, 2013 to May 11, 2014. He was discharged for arguing with other employees and making disparaging comments about others and the employer when working at Wartburg College.

In March 2014, the employer received two complaints that the claimant was following other employees around and checking their work. Both employees were especially annoyed because the claimant did not have any supervisory authority. Josh Langsted, Site Supervisor, stated the claimant's work ethic and attitude were poor and he "thought he was the best at everything but couldn't accept constructive criticism." Another employee asked if she could work a different shift that did not overlap the claimant's, stating she was scared of him.

On April 6, 2014 the claimant was upset when the employer had another employee, who was the claimant's stepson, clean a different side of an area than the one he was trained to clean. The claimant questioned the employer's decision to assign him to clean that area because he believed his stepson was doing "such a good job" on his side. The claimant went to

Mr. Langsted and began yelling at and gesturing toward Mr. Langsted and became red-faced while yelling at him. The situation did not affect the claimant's job responsibilities but Mr. Langsted let him "vent".

On April 28, 2014 the claimant and other employees were waiting to clock out around 5:30 a.m. Three employees reported the claimant stated Jamie Losch, Area Manager, was an "idiot" and said he did not like "blacks or gays." Mr. Langsted is gay and has African-American and Hispanic employees who were both upset by his comments, as were others who all found his statements offensive.

On May 8, 2014, the claimant argued with a female employee about who was responsible for cleaning a golf cage and the claimant "exploded," becoming very loud and throwing his hands in the air while going red-faced. He then clocked out at 5:45 a.m., 15 minutes before the end of his shift, because he was upset.

On May 9, 2014 the claimant called the employee he argued with May 8, 2014, a "dumb, blonde bitch." At the time the employer had five total employees on that crew, including Mr. Langsted, and at least three of them were threatening to quit if they had to continue working with the claimant.

After reviewing the claimant's conduct and considering that more than half of the crew was thinking about quitting because of the claimant's behavior towards them, the employer terminated the claimant's employment May 11, 2014.

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 § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

While the claimant asserts he was told to take a more "hands-on leadership role" during his evaluation in March 2014, there is nothing about his complained about behavior that stems from leadership. Even if the employer wanted him to show more leadership, he still held no supervisory authority. The claimant knew, or should have known, the employer did not want him to follow other employees to check their work, upsetting and annoying them, argue with and question Mr. Langsted about other employees' work or job responsibilities, and call the employer and others' names while disparaging minority groups represented by other employees and Mr. Langsted, all to the degree that the majority of his co-workers wanted to quit rather than work with him. Leaders do not cause their coworkers to want to quit rather than work with them.

Although the employer should have warned the claimant that his behavior was unacceptable, the nature of his actions was such that he should have known his conduct was inappropriate and unprofessional and would result in his termination.

Under these circumstances, 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). Therefore, benefits are denied.

DECISION:

The June 2, 2014, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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