

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK FOGG
Claimant

APPEAL NO: 08A-UI-03432-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBL FINANCIAL GROUP INC
Employer

**OC: 02-24-08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 28, 2008, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 22, 2008. The claimant participated in the hearing. Shirley Hoveland, Senior Human Resources Specialist and Kim Herrin, Director of Information Systems participated in the hearing on behalf of the employer.

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 applications consultant for FBL Financial Group Inc. from August 20, 2007 to February 14, 2008. The parties agree there was a communication gap between them and the employer felt it was the claimant's responsibility to prioritize specific jobs. On November 30, 2007, Director of Information Systems Kim Herrin told the claimant he was not working on priority issues and if he was having trouble he should speak to his team lead or Ms. Herrin. On December 7, 2007, the claimant missed a work-flow completion date because he was working on a non-priority project. On December 31, 2007, he received a verbal warning for missing target dates, failing to follow procedure and failure to communicate and the employer laid out its expectations to be accomplished by January 2008. The claimant signed that warning and started providing daily e-mail status but it was lacking in details. On February 6, 2008, Ms. Herrin issued the claimant a written warning regarding his communication skills with partners and team leads. The warning also pointed out that the claimant would sometimes ignore Ms. Herrin and did not get the items from the verbal warning done and failed to communicate that he would not be able to do so. Ms. Herrin described her areas of concern regarding the claimant as lack of high level communication and things that needed to be addressed or needed attention needed to be brought to her attention while the claimant did not feel the matters were as urgent as did Ms. Herrin. In November 2007 Ms. Herrin began to feel a growing concern about the claimant's performance. She no longer believed he was able to perform the job to the employer's expectations as he lost credibility with the employer's

business partners who wanted more validation that the changes were accurate and timely and would not affect the client's accounts. The claimant acknowledges the employer told him it thought he had a problem with communication prior to receipt of the verbal warning and he tried to work "better" with his business partners to resolve their issues but was told that some business users said he was too technical on the phone. On November 30, 2007, the claimant felt there was a conflict of communication and he did not know what the priorities of the jobs were. In mid-December 2007 the claimant tried to improve his communication skills and after receiving the verbal warning he felt he did what he was asked. When he received the written warning he felt he was being harassed about his communication skills and that others needed to improve their communication skills. He also testified he communicated with his team lead more often than with Ms. Herrin. On February 14, 2008, the claimant was involved in coding a product that should not have been done and had to be removed before the product could be put in production. The claimant blamed the one day delay on bad information from the business user. He knew his job was in jeopardy. The employer terminated his employment February 14, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the parties failed to communicate effectively, it appears that both sides were responsible for this problem although it seems the claimant was not capable of prioritizing his assignments, which might be due to the lack of communication. The employer originally believed the claimant was capable of performing his job but in November 2007 came to the conclusion he was not. The evidence does not establish that the claimant failed to make the effort to perform his job but was just incapable of doing so to the employer's expectations. Consequently, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The March 27, 2008, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs