

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ELIZABETH BANDY**  
Claimant

**APPEAL NO: 06A-UI-08197-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE CBE GROUP INC**  
Employer

**OC: 07/16/06 R: 03  
Claimant: Appellant (2)**

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Section 96 5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Elizabeth Bandy (claimant) appealed an unemployment insurance decision dated August 14, 2006, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from The CBE Group, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2006. The claimant participated in the hearing. The employer participated through Debbie Stills, Mary Phillips, and Greg Brandt. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time supervisor for this collection agency from August 28, 2003 through July 20, 2006, when she was discharged for receiving three written warnings within a one year period. The employer's policy provides that employees are discharged after receiving three written warnings within a one-year period. The claimant's first warning was issued on September 9, 2005 for a poor attitude, and the second warning on October 13, 2005 was issued for unprofessional behavior. The claimant received no further formal warnings until July 20, 2006, when she was late because she overslept. She was not aware her job was in jeopardy.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for three written warnings within a 12-month period. The first two warnings were issued in 2005 and her third warning was issued nine months after that for being late for work. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. While the claimant was discharged according to policy, being late on one occasion nine months after the previous warning is not sufficient to result in disqualification. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated August 14, 2006, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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