

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA J ROSS

Claimant

APPEAL NO. 06A-UI-10673-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION

Employer

**OC: 10/1/06 R: 04
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, FBG Service Corporation (FBG), filed an appeal from a decision dated October 24, 2006, reference 01. The decision allowed benefits to the claimant, Laura Ross. After due notice was issued, a hearing was held by telephone conference call on November 20, 2006. The claimant participated on her own behalf. The employer participated by Operations Manager Tina Donatsch, Area Manager Heather Donatsch and was represented by TALX in the person of Alyce Smolsky. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Laura Ross was employed by FBG from May 31, 2005 until December 22, 2005. She was a part-time cleaning specialist working 5:00 p.m. until 9:00 p.m. At the time of hire she received a copy of the employee handbook. Employees are required to call in at least four hours before the start time if they are not able to work a scheduled shift.

The claimant received a written warning on December 2, 2005, where she was placed on an additional 30-day probation and was told her job was in jeopardy if she missed any more scheduled shifts.

On December 19, 2005, the claimant called and said she was “having some problems” and asked for the day off because her daughter had a miscarriage. Area Manager Heather Donatsch approved her for that day off but told the claimant to let her know what was going on after that. However, Ms. Ross was no-call/no-show for December 20, 21 and 22, 2005. Operations Manager Tina Donatsch was unable to reach her by phone for the first two days and finally left a message on her voicemail after the end of her December 22, 2005, shift telling her she had been fired.

Laura Ross has received unemployment benefits since filing a claim with an effective date of October 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her absenteeism. The final written warning put her on an additional 30-day probation and informed her she could not miss any more of her scheduled shifts. The employer did give her permission to be off work on December 19, 2006, but not for any other days without further contact from the claimant to update her situation. The record establishes the claimant was no-call/no-show for December 20, 21 and 22, 2005, in violation of the employer's specific instructions and the work rules. While the claimant's personal situation was unfortunate, it does not excuse her failure to notify the employer of her absences. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 24, 2006, reference 01, is reversed. Laura Ross is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$660.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/cs