

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREG A WESTBERG

Claimant

APPEAL NO. 11A-UI-04305-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST BANK

Employer

OC: 02/20/11

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Greg Westberg, filed an appeal from a decision dated March 21, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 27, 2011. The claimant participated on his own behalf. The employer, West Bank, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Greg Westberg was employed by West Bank from September 9, 2008 until February 22, 2011 as a full-time financial services assistant. The claimant was discharged by Jill Hanson because of a customer complaint. A representative of Homemakers, a customer of West Bank, had e-mailed Kinsey Bodensteiner in the trust management department, alleging the claimant had told an account representative of Homemakers that he hated the company. The date of the incident was allegedly several weeks or months before.

The claimant denied saying he hated Homemakers. He acknowledged that approximately two years prior to the complaint he had told an account representative he had not been into the store since he was in high school. He had not bought anything because the sales person had not helped him make a purchase because he had been only a high school student at the time.

REASONING AND CONCLUSIONS OF LAW:

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.

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 proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer did not participate to provide any evidence or testimony regarding the reasons for the claimant's discharge. The claimant denied insulting a customer of the bank and the employer has not rebutted that denial. It has not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of March 21, 2011, reference 01, is reversed. Greg Westberg is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs