

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DEBBIE K MABE**  
Claimant

**FBG SERVICE CORPORATION**  
Employer

**APPEAL 19A-UI-04180-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/28/19**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(2)a – Discharge Misconduct

**STATEMENT OF THE CASE:**

On May 21, 2019, the claimant filed an appeal from the May 17, 2019, (reference 01) unemployment insurance decision that denied benefits based on her discharge for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on June 17, 2019. Claimant participated and testified. Employer participated through Hearing Representative Peggy Leight and witnesses Pam Kincaid and Kay Volz. Employer's Exhibits 1 through 5 were received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 28, 2018. Claimant last worked as a full-time cleaning specialist. Claimant was separated from employment on April 25, 2019, when she was discharged.

Upon her hire, claimant was given a copy of the employee handbook, which contains a Code of Conduct. The Code of Conduct directs employees not to discuss problems or business problems with the customer, but to bring these issues to the employee's supervisor or local district office. (Exhibit 2).

Claimant worked for the employer's client, UnityPoint, in multiple locations. In November 2018 the clinic administrator of one of the UnityPoint clinics made a complaint regarding claimant's performance. Claimant was issued a verbal warning after the employer learned from its UnityPoint contact, Brian Schwering, that clinic administrator reported being confronted by claimant about her complaint. (Exhibit 4). Claimant was advised by Volz that this was a serious violation and could not happen again. Claimant was advised that she must follow the appropriate chain of command for any issues going forward, meaning all issues should be brought to Volz or claimant's immediate supervisor, Jamie Neimeyer.

On April 24, 2019, claimant was changing out trash bags at another UnityPoint clinic. Claimant had previously spoken to Neimeyer about the trash bags, as the bags ordered were not the correct bags. After going through the appropriate channels, Neimeyer informed claimant the decision had been made for her to go ahead and use the bags anyway. While, she was working, an employee commented to claimant that the trash bags looked different and did not seem to be working very well. Claimant told the employee the wrong bags were ordered and she had reported it, but was told by her supervisor to go ahead and use them and that it was the clinic's problem. The employee claimant was speaking to said she would look into it.

On April 25, 2019, the employer received an email message forwarded from Schwering. The message stated that clinic staff were upset because the employee to whom claimant was speaking on April 24 was the medical director, Dr. Christine Segreto. (Exhibit 5). The clinic staff felt claimant had gone over their heads, and outside the chain of command, in speaking with Dr. Segreto. Claimant was subsequently discharged from employment for violating the chain of command in speaking with Dr. Segreto on April 24. Claimant testified she did not realize this conversation would lead to her discharge from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged following a conversation on April 24, 2019, with an employee of the employer's client regarding the wrong trash bags being ordered. The conduct for which claimant was discharged was, at worst, merely an isolated incident of poor judgment. The employer has not provided sufficient evidence to show claimant intended on going outside of her chain of command. Claimant's un rebutted testimony indicates she did not initiate the conversation on April 24 and was merely responding to someone's comment regarding the trash bags she was using. Such behavior does not establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The May 17, 2019, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/rvs