

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ZACH R LIGER
903 LORETTA AVE
WATERLOO IA 50702**

**THE CBE GROUP INC
PO BOX 900
WATERLOO IA 50701**

**Appeal Number: 05A-UI-00324-HT
OC: 05/30/04 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, The CBE Group, Inc. (CBE), filed an appeal from a decision dated January 4, 2005, reference 07. The decision allowed benefits to the claimant, Zach Liger. After due notice was issued a hearing was held by telephone conference call on January 25, 2005. The claimant participated on his own behalf. The employer participated by Senior Vice President of Human Resources Mary Phillips and Director of Operations Greg Brandt.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Zach Liger was employed by CBE from June 14 until December 9, 2004. He was a full-time collector.

Mr. Liger received a verbal warning on October 21 and a written warning on November 27, 2004, for profanity on the calling floor. On December 1, 2004, he received a second written warning for inappropriate behavior when he was squirting co-workers with a water bottle. The claimant had acknowledged receipt of the company policies, which calls for discharge for any employee who received three written warnings in a one-year period.

On December 9, 2004, the claimant was seen with a pocketknife on the calling floor. The blade was out and it was approximately two inches long. The company policy prohibits having dangerous items in the work place. Later that same day, the claimant asked the supervisor if they were going to get out early tonight and she said no. He then asked, "What if I call in a bomb threat?"

These incidents were reported to Senior Vice President of Human Resources Mary Phillips and she and Director of Operations Grey Brandt interviewed the claimant. He acknowledged bringing the pocketknife onto the calling floor and also the comment about the bomb threat, but indicated he was joking. He was discharged at that time.

Zach Liger has received unemployment benefits since filing an additional claim with an effective date of December 12, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 already received three warnings regarding inappropriate conduct on the calling floor. The final occurrences were bringing a pocketknife into work and displaying the blade and making a comment about a bomb threat. The administrative law judge notes the claimant denied making or admitting to asking the question about the bomb, but his past acts of ill-advised comments and actions mitigates against his credibility. While he may have been joking, such comments are not a joking matter in the work place. He displayed a disregard for the employer's policies and the sensibilities of his co-workers. His conduct interfered with the employer's obligation to provide a safe and harassment-free work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 4, 2005, reference 07, is reversed. Zach Liger is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,800.00.

bgh/sc