

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP J GARTHOFF
Claimant

APPEAL NO: 12A-UI-13350-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

OC: 09/30/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 31, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Alyce Smolsky represented the employer. Lindsey Nissen and Mike Oliver appeared on the employer's behalf. During the hearing, Employer Exhibits One through Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2011 as a full-time cleaning specialist. Oliver supervised him. The employer started noticing problems with the claimant's work performance or quality of work in February 2012. The claimant received his first written warning for this on August 6, 2012. (Employer Exhibit Two-b.) This warning informed the claimant he was missing several areas that he was assigned to clean and had not.

On August 9, the claimant received another written warning and was suspended for one day, (Employer Exhibit Two-a), for failing to mop and or dust mop floors. The warning informed him that he must immediately meet the employer's quality goals or he would be discharged. When the claimant was suspended, he understood his job was in jeopardy.

In September 2012, the employer assigned a new employee to work with the claimant so the claimant could show the employee what needed to be done. During the last shift the claimant worked, the employer talked to him not wiping down some tables and not mopping some floors in the first building he cleaned. After the employer showed him the problems, the claimant corrected the problems the employer brought to his attention.

Later during this same shift in the second building the claimant worked, the employer discovered the claimant did not clean three chalkboard trays, did not dust mop some floors to the employer's satisfaction and missed picking up some garbage. The employer did not believe the claimant did any dust mopping in one room and three rooms were not done correctly.

When the employer discovered the problems in the second building, the employer decided to discharge the claimant for again failing to do his work correctly and at the employer's required quality level. When the claimant returned to work after being sick one day, the employer discharged him.

When the claimant was trained, he was told chalk trays did not have to be cleaned until the end of the week unless they were very dirty. The claimant denies that he did not dust mop floors. He dust mopped floors, but acknowledged he may not have met the employer's quality standards. The employer believed the claimant could do his job correctly because there were times there were no problems with his work and other times there were problems with the way the claimant completed his cleaning tasks. The claimant did not understand why the employer assigned a new employee to work with him if he repeatedly failed to perform his job satisfactorily.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

After the claimant was suspended on August 9, he knew his job was in jeopardy. There are not any testified problems again until his last shift. During that shift, the employer showed the claimant problems with his cleaning in building one. After the employer pointed out these problems, the claimant went back and corrected the problems. After the employer discovered more problems of the same nature in building two, the employer made the decision to discharge the claimant. The problems in building two included failing to clean some chalk boards that the claimant understood he did not need to clean until Friday unless the chalkboard tray was very

messy or dirty. Although the employer asserted the claimant did not dust mop some floors in building two, the claimant testified he did but he knew it was not to the employer's standards.

Since the claimant had the ability to do his job satisfactorily, he understood his job was in jeopardy and the employer talked to him about dust mopping issues in building one, his failure to knowingly dust mop floors satisfactorily in building two amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of September 30, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 31, 2012 determination (reference 02) is affirmed. The employer discharged the claimant for committing work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 30, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css