

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JONATHAN J DOWIE**  
Claimant

**APPEAL NO. 11A-UI-02436-L**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE CBE GROUP INC**  
Employer

**OC: 11/14/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 22, 2011 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held on April 4, 2011 in Des Moines, Iowa. Claimant participated and was represented by Joseph Glazebrook, Attorney at Law. Employer participated through director Harley Wilson and supervisor Nihad Berbo. Claimant's Exhibits A and B were admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time collector and was separated on November 15, 2010. Two team lead employees reported separately to Berbo that claimant stood up to take a call at another desk and blurted out loudly when there was a connection problem on November 13, 2010 at about 9:45 a.m., "Oh my fucking God." (Claimant's Exhibit B) Berbo also heard the comment. The line at another extension and desk, which he was going to answer, was open and his line at his desk was on mute. Berbo reported the information to manager John Halverson. When confronted, claimant responded that he was frustrated and did not remember either way saying that or not.

The employer's policy requires "businesslike and professional" behavior and prohibits "disrespectful" and "indecent" conduct. (Claimant's Exhibit A, pages 38 through 41) A prior written warning was issued on November 1, 2010 for an October 29 monitored call without details provided as to the alleged misconduct. He admitted he had asked a consumer if he had considered donating plasma in order to obtain funds to pay on his account. The employee comment section was left blank on that warning. Another warning was issued in writing on August 10, 2010 for an outbound call on that date that Berbo overheard when claimant argued and talked over the consumer, said, "I'm not calling you back, all I'm getting from you is excuse after excuse." Claimant responded that supervisor Matthew Beaman instructed him to call and

he did not want to call because of frustration with prior communication with that consumer who had repeatedly defaulted on promises to pay.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995).

Claimant's repeated rudeness and inappropriate language to and around the employer's customers after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The February 22, 2011 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs