

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R CLARK
Claimant

APPEAL NO. 07A-UI-02096-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBL FINANCIAL GROUP INC
Employer

**OC: 01/28/07 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

FBL Financial Group, Inc. (FBL) filed an appeal from a representative's decision dated February 19, 2007, reference 01, which held that no disqualification would be imposed regarding William Clark's separation from employment. After due notice was issued, a hearing was held by telephone on March 15, 2007. Mr. Clark participated personally. The employer participated by Lori Strottman, Employment Services; Nancy Lay, Manager of Annuity Administration; and Sara Deich, Human Resources Specialist. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Clark was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Clark began working for FBL on July 5, 2006 as a full-time supervisor in new business annuities. He was discharged because the employer felt his management style created a hostile work environment. Mr. Clark went through orientation and supervisor's training after he began the employment. During training, he was made aware of the employer's policy against sexual harassment.

During the week of January 15, 2007, three female employees complained about Mr. Clark. One of the complaints was that he often made comments regarding celebrities' breasts. He would also reference sexual scenes in movies he had seen. On one occasion, he was discussing the fact that a cleaning lady entered the restroom while he was in there. He stated that he had to "tuck it away quickly" when she entered. On another occasion, a female leaned over to say something to a female coworker, Erica Chipp. Mr. Clark stated it looked as if she was going to kiss her and that he would have to wipe the steam from his glasses. The comment was made in the presence of others and caused embarrassment to Ms. Chipp. Mr. Clark related to his subordinates that he and his wife had gone to a show at the civic center. He related that, when characters in the show were removing clothing and kissing, his wife reached

over and grabbed his leg. He also related to subordinates that he and his wife had gone to a show in Las Vegas in which there was simulated sex. A number of employees in his area told the employer they were uncomfortable with Mr. Clark's topics of conversation.

As a result of the investigation that began with the report of three females working for Mr. Clark, the employer determined that he was in violation of its standards and discharged him.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Clark was discharged for making inappropriate comments at the workplace. As a supervisor, the employer had the right to expect a higher standard of behavior from him. As a supervisor, he should have known, without benefit of prior warnings, that making comments of a sexual nature at work was contrary to what was expected of him. Mr. Clark denied all of the allegations made by the females who complained. The administrative law judge gives more credence to the employer's hearsay testimony than to Mr. Clark's sworn denials. The administrative law judge is not inclined to believe that the three females would all fabricate the same allegations against him. Moreover, if they were going to fabricate statements in order to get Mr. Clark in trouble, one would think the allegations might be racier.

Mr. Clark's conduct as identified herein constituted a substantial disregard of the standards the employer had the right to expect from a supervisor. His conduct created an uncomfortable working environment for at least three of the people working under him. His conduct had the potential of subjecting the employer to unwarranted claims of sexual harassment or hostile work environment. For the reasons cited herein, it is concluded that misconduct has been established and benefits are denied. No overpayment results from this reversal of the prior allowance as Mr. Clark has not been paid benefits on his claim filed effective January 28, 2007.

DECISION:

The representative's decision dated February 19, 2007, reference 01, is hereby reversed. Mr. Clark was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs