

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE E THOEL
Claimant

APPEAL NO: 14A-UI-03116-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORTATION
Employer

OC: 02/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 19, 2014, reference 01, that held he was discharged for wanton carelessness on February 19, 2014, and benefits are denied. A telephone hearing was held on April 30, 2014. The claimant, and Attorney, Eric Eide, participated. Thomas Kuiper, Representative, and Robyne Holtman, Manager, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was re-hired on October 1, 2013, and last worked for the employer as a full-time cleaning specialist on February 18, 2014. During an earlier period of employment, claimant received an acceptable to good performance evaluation on January 23, 2013. He left that period of employment in September 2013 and relocated to Manson, Iowa.

The employer assigned claimant to clean at Manson High School. Claimant's work quality was affected by the emotional impact of his wife's passing. The employer issued claimant a verbal warning for work quality issues on December 4, and written warning for the same issue on December 20. It provided re-training for claimant.

The employer terminated claimant on February 19, 2014 for quality of work. The employer received complaints and it was asking for brooms to sweep classrooms. The employer manager witness was not the site manager and she could not state the period these issues had occurred.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes employer failed to establish claimant was discharged for a current act of misconduct on February 19, 2014 for poor work quality.

The employer witness could not offer the time frame leading to termination of the work performance complaints that is required to establish the current act of misconduct. The employer did not offer the site managers as witnesses to show claimant could have performed quality work and knowingly failed to do so. The client complaint is not requesting claimant should be replaced but it is asking for cleaning equipment to perhaps do a better job or for some other reason.

Job disqualifying misconduct is not established due to a failure to isolate the current act of misconduct after the last warning of December 20, 2013.

DECISION:

The department decision dated March 19, 2014, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on February 19, 2014. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css