

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBIE K ROOP
Claimant

APPEAL NO. 13A-UI-03321-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORP
Employer

OC: 02/17/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 13, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on April 17, 2013. Claimant participated. Employer participated through internal manager, Robyne Holtman, district manager, Mike Livermore, and program manager, Tanya Weaver and was represented by Robin Moore of TALX. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a cleaning specialist from July 13, 2009 and was separated from employment on February 14, 2013. Claimant agrees that on February 13 she was insubordinate with her direct supervisor Tanya Weaver when asked to move to a different building for the day. Weaver could not get her calmed down so sent her home for the day and directed her to report to Holtman and Livermore the following day. She reported with her friend Debbie Keller. While Livermore was still speaking to her about the reasoning for her suspension she got up to leave and opened the door so hard it put a hole in the wall and knocked a clock off the wall. Keller wrote that claimant told Livermore as he was talking that it was time for her to go so she would not argue with him. Keller believed the door slipped (not as the employer's representative read that claimant's action was "stupid"). (Claimant's Exhibit A) In September 8, 2011 a supervisor Tammy Dee reported claimant yelled at her across the room at the client location and was given a written warning for that.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Claimant did not rebut employer's reason for the suspension (disobeying Weaver and not calming down) but argues that the door slipped from her hand and was not deliberately slammed open. Given that she walked out while Livermore was still talking and opened the door with such force that it did escape her grasp, put a hole in the wall and knock a clock off the wall, it is apparent that her precipitating action was deliberate and the consequences were reasonably foreseeable. Since she had been insubordinate with Weaver the day before and was insubordinate with Livermore during the suspension meeting, and she had been warned about speaking uncivilly towards a supervisor in the past, her repeated behavior was misconduct sufficient to warrant a denial of benefits.

DECISION:

The March 13, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css