

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LACEY B CHREST
Claimant

APPEAL NO. 09A-UI-06570-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM SERVICES INC
Employer

OC: 04/05/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the representative's decision dated April 23, 2009, reference 01, which held the claimant was dismissed under non disqualifying conditions. After due notice a telephone hearing was scheduled for and held on May 26, 2009. The claimant participated personally. The employer participated by Dana Fritsche, Human Resource Administrator.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a credit specialist for DM Services, Inc. from November 3, 2008 until March 16, 2009 when she was discharged for excessive absenteeism. The claimant was employed on a part-time basis and was paid by the hour.

The claimant was discharged when the employer believed that the claimant had failed to report for scheduled work and failed to provide notification for three or more consecutive work days. Ms. Chrest left work early on March 16, 2009 due to the illness of her son and continued to be absent for an extended period due to the medical condition of a family member. Ms. Chrest called in each day to report her impending absence. On about March 23, 2009, the claimant was informed to take as much time off as needed and not to worry. The claimant reasonably interpreted the statement to mean that she was not required to call in each day. Ms. Chrest was informed of her discharge on April 1, 2009 for failing to provide daily notification.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

The evidence in the record establishes that the claimant had been absent due to illness in her family and had reported her impending absences each day for an extended period. The claimant testified that due to the ongoing nature of the need for her to be absent, she had been specifically informed by a management individual not to worry and that in effect it was not necessary for her to continue to call in on a daily basis. The claimant followed the information provided and was discharged on April 1, 2009 for failing to call in each day.

The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Act. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons intentional disqualifying misconduct has not been shown.

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.

DECISION:

The representative's decision dated April 23, 2009, reference 01, is affirmed. The claimant was dismissed under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs