

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANKIE H TROTTY**  
Claimant

**APPEAL NO. 12A-UI-05422-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY LC**  
Employer

**OC: 04/08/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jacobson Staffing Company, LC filed a timely appeal from a representative's decision dated April 30, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on June 4, 2012. Claimant participated. The employer participated by Mr. Frank Tursi, Senior Operations Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Frankie Trotty began employment with Jacobson Staffing Company, LC on January 16, 2009. The claimant was normally assigned to work at Titan Distributing Company but recently had been assigned to work on a temporary basis at a different client employer, Aramark Midwest, where Mr. Trotty worked on a light duty limitation.

Mr. Trotty had called in to report his impending absence to Jacobson Staffing Company on April 10, 2012. The employer believed that the claimant had not properly called in and believed that the claimant had been a no-call/no-show on that date. For that reason Mr. Frank Tursi went to the Aramark location to issue Mr. Trotty a warning on the morning of April 11, 2012. On that date Mr. Trotty clocked in at 7:33 a.m. although his beginning time was 7:30 a.m. The claimant had unexpectedly had a blowout on the interstate en route to work and had to quickly find alternative transportation. Because the claimant had previously been warned for attendance violations under the Titan Distributing Company's policy, Jacobson Staffing believed that the claimant's final infraction on April 11, 2012 made the claimant exceed the number of infractions available to the claimant under Titan's policy and, therefore, discharged Mr. Trotty from his employment. The claimant was unaware that he was under the Titan attendance policy as he was not performing services at that client location at the time of his discharge.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the employer made a business decision to separate Mr. Trotty from his employment with Jacobson Staffing Company, LC because the claimant had reported late on the morning of April 11, 2012. The company believed that because the claimant had again been late that he had exceeded the permissible number of attendance infractions allowed under the client/employer's policy where Mr. Trotty had previously been assigned. The claimant had been assigned to work at Titan Distributing Company. Most recently, however, the claimant had been temporarily assigned to work at the Aramark Midwest Company on a light duty limitation. The evidence in the record does not establish that the claimant was aware that the employer was choosing to utilize the attendance policy from a job assignment where the claimant was no

longer assigned in determining whether his discharge was disqualifying or the claimant was temporarily employed at a different client employer.

The evidence in the record establishes that the most recent attendance infraction was not an issue of personal responsibility but due to factors that were largely beyond the claimant's control. The claimant had a blowout en route to work and quickly made alternative transportation arrangements to arrive to work three minutes late.

While the decision to terminate Mr. Trotty may have been a sound decision from a management viewpoint, the evidence in the record does not establish intentional, disqualifying misconduct sufficient to warrant the discharge from employment based upon the final incident that caused the claimant's discharge.

**DECISION:**

The representative's decision dated April 30, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs