

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CHARLES A TROBAUGH
706 DANBURY ST NE
CEDAR RAPIDS IA 52402**

**BJORKLUND LAW FIRM
504 – 1ST AVE
PO BOX 5577
CORALVILLE IA 52241**

**Appeal Number: 04A-UI-02748-CT
OC: 02/01/04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Suspension/Discharge for Misconduct

STATEMENT OF THE CASE:

Charles Trobaugh filed an appeal from a representative's decision dated March 3, 2004, reference 03, which denied benefits based on his separation from Bjorklund Law Firm. After due notice was issued, a hearing was held by telephone on April 16, 2004. Mr. Trobaugh participated personally and offered additional testimony from Jane Trobaugh. The employer participated by Dennis Bjorklund, Attorney at Law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Trobaugh was employed by Bjorklund Law Firm from

November 17, 2003 until January 27, 2004 as a full-time legal assistant. He was discharged due to dishonesty in connection with his employment.

Mr. Bjorklund was to be away from the office on vacation from January 24 through February 15, 2004. On Monday, January 26, Mr. Trobaugh called the office to report that he would not be at work because his car was not working. On January 27, he called to report that he would not be at work because his wife was in the hospital. He indicated in one of his calls with the office that he was calling from the hospital. The office staff wanted to send flowers and questioned Mr. Trobaugh as to which hospital his wife was in. He refused to answer questions regarding his wife's hospitalization. At approximately 3:00 p.m. on January 27, he spoke with Mr. Bjorklund and acknowledged that he had given false information regarding his wife's hospital visit. Mr. Bjorklund advised him not to return to the office until he was back from vacation and they would discuss the matter at that time.

Subsequent to the 3:00 p.m. conversation, Mr. Bjorklund learned that Mr. Trobaugh had changed the date on his pay check so that he could cash it before the February 1 pay date. The check was for the period January 15 through January 31, 2004. Mr. Bjorklund did not feel Mr. Trobaugh was entitled to pay for January 26 and 27 because he had not been at work. Therefore, he telephoned Mr. Trobaugh and directed him to return pay for the two days that he did not work. He was told that if he did not return the pay that day, he would not be considered for continued employment when Mr. Bjorklund returned from vacation. Mr. Trobaugh was notified of his discharge on or about February 17, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Trobaugh was separated from employment for any disqualifying reason. He filed a claim for job insurance benefits effective February 1, 2004. He was not working at that point because Mr. Bjorklund had directed him not to return to the office until after Mr. Bjorklund returned from vacation. Mr. Bjorklund made this decision based on the fact that Mr. Trobaugh had given false information regarding his absence of January 27. The administrative law judge does not consider this a layoff but a disciplinary suspension. Where an individual is unemployed due to a disciplinary suspension imposed by the employer, he is considered discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). Mr. Trobaugh was suspended because he lied to the employer regarding the reason for his absence of January 27. The employer had the right to expect that he would be honest in his dealings. Mr. Trobaugh breached that obligation when he deliberately and intentionally gave false information to the employer. His absence of January 27 was totally unrelated to his wife's health. The administrative law judge has some doubt as to whether his wife went to the hospital during the early morning hours of January 27. They testified that they drove to the hospital in separate cars, in spite of his wife's chest pains, and that Mr. Trobaugh did not remain at the hospital while his wife was being treated. They also testified that the wife reported to her job on the morning of January 27 at her 8:00 a.m. start time. Given these facts, the administrative law judge does not believe that Mr. Trobaugh was up through the night with his wife because of her heart ailment.

The decision to discharge Mr. Trobaugh was based on his dishonesty regarding the reason for his absence and his failure to return pay he had not earned. The administrative law judge concludes that his dishonesty regarding January 27 is sufficient, standing alone, to constitute disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decisions dated March 3, 2004, reference 03, is hereby affirmed. Mr. Trobaugh 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.

cfc/b