

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMI R TROUTWINE**  
Claimant

**APPEAL NO. 12A-UI-08319-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DM SERVICES INC**  
Employer

**OC: 06/17/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated July 5, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 6, 2012. Claimant participated. The employer participated by Ms. Monica Rodrequez, Human Resource Administrator.

**ISSUE:**

The issue is whether the claimant was discharged for 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: Tammy Troutwine was employed by DM Services, Inc. from November 9, 1988 until June 15, 2012 when she was discharged from employment. Ms. Troutwine worked as a full-time credit analyst/collector and was paid by the hour. Her immediate supervisor was Marsha Shmidt.

Ms. Troutwine was discharged on June 15, 2012 when the employer believed that she had not properly reported her impending absence on June 7, 2012. Company employees are expected to call in within one hour of the beginning time of their work shift to report absences. The claimant was aware of the policy and had previously been warned.

On June 7, 2012, Ms. Troutwine was ill and attempted to report her impending absence by telephoning the company from her cell phone at 4:58 a.m. and 6:58 a.m. The claimant believed that the message to the company had been received and was timely. When the employer alleged approximately one week later that she had not properly called in, Ms. Troutwine immediately retrieved her cell phone and displayed her call-ins to the company number and at the times of 4:58 a.m. and 6:58 a.m. on June 7, 2012. Because the claimant had disputed whether she had properly called in, the company took a number of additional hours to investigate. When the company's system could not locate any calls made by the claimant on June 7, 2012, except a call that had been made at 7:01 a.m., a decision was made to terminate

Ms. Troutwine from her employment. Although the employer had allowed the claimant to verify her call-in times via a cell phone in the past, on this occasion, the employer chose to discharge after reviewing the claimant's attendance records since the time that she was employed and determining the claimant had been repetitively absent or tardy during the numerous years of her employment with the company.

**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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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.

Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

In this matter, the employer alleged over one week later that the claimant had not properly called in on June 7, 2012. In support of the claimant's position that she had called in properly, Ms. Troutwine immediately retrieved her cell phone and showed a depiction of the company's telephone number called and a reported time of the calls being made at 4:58 a.m. and 6:58 a.m. on June 7, 2012. Although the employer had relied upon evidence of that nature in the past, in this instance a decision was made to terminate the claimant because the company's computerized systems could not locate any calls made that day from the claimant's phone except for a call that was received at 7:01 a.m., one minute later than the one-hour time limit. In making a decision whether to allow the claimant to continue in employment it appears the employer reviewed the claimant's attendance history during the approximate 13 years of employment and determined overall that the claimant's attendance had not been good. The employer, therefore, made a decision to terminate Ms. Troutwine from her employment.

The administrative law judge finds the claimant's testimony that she called in properly to be credible. When questioned about the matter the claimant immediately retrieved her cell phone and showed the calls or attempts to call in that were properly made within the one-hour time frame allowed for calling in by the company.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for the above-stated reasons but whether the discharge is disqualifying under the provisions of the law. While the decision to terminate Ms. Troutwine may have been a sound decision from a management viewpoint, for the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional, disqualifying misconduct on the part of the claimant at the time of discharge. Claimant had properly called in and reasonably believed that her calls to the company had been properly received within the one-hour time frame allowed by company policy. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 5, 2012, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing 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

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