

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

JOSHUA J WHITE
1407 – 6TH AVE SE
CEDAR RAPIDS IA 52403-1221

NORDSTROM INC
c/o TALX EMPLOYER SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-06841-DT
OC: 05/07/06 R: 03
Claimant: Respondent (2)

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 – Discharge

STATEMENT OF THE CASE:

Nordstrom, Inc. (employer) appealed a representative's June 21, 2006 decision (reference 01) that concluded Joshua J. White (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on July 28, 2006. The claimant participated in the hearing. Peg Heenan of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Robin Pospisil, Camala Johnson, and Michelle Wehr. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 4, 2005. He worked full time as a personal shopper at the employer's Cedar Rapids, Iowa fulfillment and contact center. His last day of work was May 11, 2006. The employer discharged him on that date. The stated reason for the discharge was failure to accurately record time worked.

The claimant worked a Tuesday, Wednesday, Thursday, and Saturday 3:00 p.m. to 11:30 p.m. schedule. The claimant had prior attendance issues, including ensuring he had properly clocked in; on February 22, 2006 he had been given a first and final written warning, in part for failing to use the time clock and then writing in an incorrect time on his timesheet.

On Thursday, May 4, 2006, the claimant came into the building, passing the access point at 2:59:08 p.m. He went into the locker room at 2:59:21 p.m., and exited the locker room at 3:00:34 p.m. He went up the stairs to clock in and enter the work floor; at 3:01:02 he reached the time clock and stood in front of it looking at it. At 3:01:12 he put his hand on the time clock but did not attempt to clock in. The time clock has a screen upon which the current time is clearly displayed before the clock-in process is initiated. The claimant then proceeded out to the work floor without punching in.

On Wednesday, May 10, 2006, the claimant's team leader sent him a message indicating she had his timesheet and needed to put in the time he got there on May 4. The claimant responded, saying "according to the clock it stated I had about 2-3 minutes." The team leader responded that "I need to know what time you were on the floor to start assisting customer's. (sic)," and asking for an exact time. The claimant responded, "I logged into my phone on time at 3:10 p.m. I was on the floor at 3:00 p.m."

The employer then compared the claimant's statement with the information from its video surveillance system, which is synchronized with the time clock. Concluding that the claimant had made a known false statement about his time going onto the floor and had intentionally failed to clock in, the employer discharged the claimant. The claimant asserted that the reason he had not clocked in when he paused at the time clock was because he thought he had already clocked in before going to the locker room and did not want to clock in a second time.

The claimant established a claim for unemployment insurance benefits effective May 7, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,760.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting

work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge finds the claimant's explanation as to why he did not clock in after pausing and looking at the time clock and as to why he claimed to his team leader to have been on the floor at 3:00 p.m. to not be credible. The claimant's failing to clock in prior to entering the floor and his failure to accurately advise his team leader that it was at least a minute after 3:00 p.m. when he entered the floor shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's June 21, 2006 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 11, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$1,760.00.

ld/pjs