

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNA L SISCO

Claimant

APPEAL NO. 16A-UI-05807-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC

Employer

OC: 08/23/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Anna Sisco (claimant) appealed a representative's May 16, 2016 (reference 02) decision that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Nordstrom (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 10, 2016. The claimant participated personally. The employer was represented by Kathy Lauritzen, Hearings Representative, and participated by Jill McDowell, Human Resources Assistant, and Matt Henderson, Picking Assistant Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 4, 2015, as a full-time picking processor. The claimant signed for receipt of the employer's handbook on March 3, 2015. On February 14, 2016, the employer issued the claimant a written warning for excessive tardiness. On March 16, 2016, the employer issued the claimant a written warning for failure to accurately record her hours. The employer notified the claimant in each warning that further infractions could result in termination from employment.

On April 29, 2016, the claimant arrived in the employer's parking lot and parked in a handicapped spot; a place in which she was not legally allowed to park. She parked there because there was not a parking spot near the entrance. She clocked into work on time at 6:00 a.m. Shortly thereafter, a friend told her the interior lights were on in her car. The claimant also discovered she did not have her badge. The claimant proceeded to the receptionist to obtain a visitor's badge and to her work location. She asked her supervisor if she could return to her car to turn off her lights. The supervisor allowed her to return to her car. The claimant returned to her car, turned off the lights, and moved her car to a non-handicapped parking place. On April 29, 2016, the employer terminated the claimant for time clock fraud. At the hearing, the employer indicated they terminated the claimant for lack of good judgment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer provided a final incident that showed the claimant making every effort to get to work on time. The claimant's actions of parking in the handicapped spot did not show a deliberate violation or disregard for the employer. It did show that the claimant had poor judgment. This falls under the category of unsatisfactory conduct or good faith error in judgment or discretion. The claimant got permission from the employer to return to the car. Her actions while in the car do not constitute misconduct because the employer allowed her to be there. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's May 16, 2016 (reference 02) decision is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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