

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE M RALSTON
Claimant

APPEAL NO. 11A-UI-02009-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 01/16/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 9, 2011, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 15, 2011. The claimant participated. The employer participated by Heather Anderson, operations manager; Robin Pospisil, human resources manager; and Sarah Huber, team leader. The employer was represented by Chris Scheibe. The record consists of the testimony of Robin Pospisil; the testimony of Sarah Humber; the testimony of Heather Anderson; the testimony of Jackie Ralston; and Employer's Exhibits 1-6.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a fashion retailer. The claimant worked in the employer's Cedar Rapids, Iowa, call center as a personal shopper. She was hired on August 28, 2008. She was a full-time employee. Her last day of work was January 17, 2011. She was terminated on January 17, 2011. The reason for her termination was dismissing customers.

The claimant's responsibility as a personal shopper was to resolve customer concerns or complaints. The contact with the customer might be by telephone, email, or live chat online. The employer's goal was that every customer complaint be resolved with one contact. The employer had a zero tolerance policy for dismissing customers. Dismissing customers means that the personal shopper ended the contact with the customer before the customer's complaint was addressed. This meant that the customer had to call back or another chat was initiated with a different personal shopper.

On January 13, 2011, Sarah Huber, the claimant's direct supervisor, was notified by a quality auditor about a chat between the claimant and a customer on January 7, 2011. The auditor was concerned about the quality of service because the claimant had dismissed the customer without resolving the problem. Ms. Huber reviewed the chat and spoke to the claimant about it. The claimant agreed that she should not have dismissed the customer as she did.

Ms. Huber was asked to do some further research and she pulled up the claimant's chats from January 6, 2011; January 7, 2011; and January 8, 2011. Five other instances were discovered where the claimant dismissed customers without assisting them. The employer made the decision to terminate the claimant based on its zero-tolerance policy and the multiple dismissals.

The claimant had been trained on the proper chat procedure and had satisfactorily performed her job in the past.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance unless the claimant's actions constitute repeated acts of negligence and carelessness that rise to a material breach of the employer's interests. The employer has the burden of proof to show misconduct.

The issue in this case is whether the claimant's repeated dismissals of customers is simply unsatisfactory job performance or a material breach of the employer's interests. The claimant was trained on the proper method of handling customer inquiries. She had satisfactorily performed her job in the past. In just three days in January 2011, however, the claimant had six dismissals of customers. She terminated a contact with a customer prior to resolving that customer's problem. The claimant was asked why she did this and she testified that she accidentally cut off the customer while she was doing what was known as a double chat. The claimant said she had a problem with her computer and that she had reported this problem to her mentor.

The administrative law judge has carefully weighed the testimony of the witnesses and concludes that the claimant did deliberately dismiss customers. Her testimony that she accidentally dismissed these customers is rejected. The claimant never reported problems with her computer when she had her first discussion with Ms. Huber about the January 7, 2011 chat on January 13, 2011. She also testified that she did not bring up the computer problem when she was terminated. Ms. Huber testified that if a computer problem had been reported, she would have known about it. She had no knowledge about a computer problem.

The claimant's actions were more than unsatisfactory job performance. She was trained on the proper procedure and had done the proper procedure in the past. The claimant's actions show a pattern of carelessness and negligence that amounts to misconduct. The employer had a material interest in resolving customer complaints promptly. The claimant breached her duty as a personal shopper to provide that customer service. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits

were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The representative's decision dated February 9, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw