

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERCEDES VESTAL
Claimant

NORDSTROM INC
Employer

APPEAL 20R-UI-01282-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/24/19
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mercedes Vestal (claimant) appealed a representative's December 16, 2019, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Nordstrom (employer). This administrative law judge issued a decision on January 16, 2020, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on February 13, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 27, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

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 in March 2018, as a full-time fulfillment worker. She signed for receipt of the employer's handbook when she was hired. It contained a point system attendance policy. When employees accumulated eight attendance points, they were terminated. If an employee was not absent for thirty days, one point was removed.

The employer did not issue the claimant any warnings during her employment. She had accumulated 6.5 points when the employer changed its attendance policy.

In October 2019, the employer rolled out a new attendance program that it verbally presented to employees at a meeting. Employees had many questions but the employer only allotted fifteen minutes for the meeting. The new program was not in writing and employees did not sign for it. The employer did not answer questions about how many occurrences would constitute termination and whether points from the old system would carry over into the new system. The claimant asked her supervisor questions about the new system and was told it had to do with a pattern of absenteeism.

After the new attendance policy started, the claimant had no incidents of absenteeism. On November 29, 2019, the claimant properly reported that she would be late to work because her car would not start. She was waiting for a person to jump start her car. The claimant's supervisor called the claimant on November 29, 2019, and terminated her for her one absence under the new program.

Under the attendance policy that the claimant signed for, the claimant would have received one-half point for being tardy or one point if she were absent the entire day. The claimant would have lost one to two points for having not been absent for thirty days. Her point total at the time of termination would have been 5, 5.5, or 6.5, depending on the length of her absence and the time since her previous absence.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 16, 2019 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn