

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL L DOWNING**  
Claimant

**APPEAL NO. 10A-UI-06204-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORDSTROM INC**  
Employer

**Original Claim: 03/28/10  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's April 22, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on July 1, 2010. The claimant participated in the hearing. Peg Elofson represented the employer. James Jungjohan and Kaley Dolan appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 16, 2006. The claimant worked as a full-time return inspector processor. Jungjohan supervised the claimant.

On October 29, 2009, the claimant received a warning, called an opportunity check, for asking co-workers when they were both off the clock about the employer's open door policy. The claimant received the opportunity check for making an inappropriate comment to a co-worker. (Employer Exhibit One.)

On March 30, 2010, the claimant tossed a lint roller refill brush to a co-worker who was 29 feet from the claimant. The claimant did not want to hit anyone with the brush that weighs 0.25 pounds. She looked around several times before she tossed the brush that landed on a co-worker's desk. The claimant did not think anything about tossing the brush because co-workers tossed brushes and shot rubber bands at work on a continual basis. The claimant did not think what she had done was any different than what others did or that she had done anything wrong. No one said anything to the claimant on March 30 about the brush she had thrown.

On March 31, a male employee reported the claimant had thrown the brush and it had come close to hitting his face. This employee was not injured. The employer investigated the incident. After reviewing the videotape of the incident, the employer concluded the claimant had not thrown the brush with any malicious intent to hurt anyone, but she had waited until a trainer left and attempted to hide after she threw the brush.

The employer discharged the claimant on March 31, 2010. The employer discharged her because the claimant's March 30 conduct violated the employer's policy by failing to treat her co-workers with respect.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The employer warned the claimant on the October 29, 2009 opportunity check that she was expected to maintain acceptable behavior and to use good judgment in all situations or she could be discharged. Even though the employer may have disciplined other employees for throwing objects at work, the claimant's testimony that throwing a brush as she did was not out of the ordinary was not refuted. The claimant used poor judgment when she threw the brush. The employer even concluded the claimant had not thrown the brush with the intent to injure anyone. The claimant's conduct on March 30, 2010, does not rise to the level of work-connected misconduct. Therefore, as of March 28, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 22, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 28, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw