

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIERRAH J CROSS-SYKES
Claimant

APPEAL NO. 16A-UI-11185-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 09/11/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tierrah Cross-Sykes (claimant) appealed a representative's October 6, 2016, decision (reference 01) 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 November 1, 2016. The claimant participated personally. Prior to the hearing, the employer notified the administrative law judge that it would not be participating 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 on November 9, 2012, as a full-time returns and inspections processor working Sunday through Thursday, 10:00 p.m. to 6:00 a.m. The claimant does not remember receiving the employer's handbook. The employer did not have a policy regarding social media that the claimant knew about. The employer did not issue the claimant any written warnings.

The claimant was on maternity leave from June 30 to August 25, 2016. Shortly after she returned to work, on August 30, 2016, she was beaten up in the parking lot as she was going to work. The claimant was injured. The employer placed the claimant on two weeks paid leave and returned her to work on September 11, 2016. She worked on September 11, 12, 13, and 14, 2016. As she was leaving work on September 15, 2016, from her shift that started on September 14, 2016, the employer asked to speak with her. The employer told her she was terminated for posting things on social media about a co-worker. The claimant asked for information about the post but the employer would not provide any. The claimant was unaware of violating any policy or saying anything about a co-worker on social media.

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). 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.

DECISION:

The representative's October 6, 2016, decision (reference 01) 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

bas/rvs