

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DEE R SACORA  
3840 DALEWOOD AVE SE  
CEDAR RAPIDS IA 52403

NORDSTROM INC  
c/o TALX EMPLOYER SERVICES  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-01264-DT  
OC: 01/01/06 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Dee R. Sacora (claimant) appealed a representative's January 23, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Nordstrom, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record and an informal rescheduling, a telephone hearing was held on February 21, 2006. The claimant participated in the hearing. The employer responded to the hearing notice and notified the Appeals Section that it had elected not to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 14, 2005. She worked full time as a universal agent in the employer's Cedar Rapids, Iowa call center. Her last day of work was December 27, 2005. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has an eight-point attendance policy. Prior to December 27, the claimant had incurred seven points and realized her job was in jeopardy. She had incurred five points due to properly reported health issues, and two points for missing two days of overtime for which she had signed up but forgotten.

The claimant normally worked a 3:00 p.m. to 1:30 a.m. shift. When she got home after getting off work at 1:30 a.m. the morning of December 27, 2005, she discovered extremely disturbing information regarding her husband and the state of their marriage. She and her husband had a confrontation, and she had virtually no sleep. Sometime after 8:00 a.m. the claimant called her team leader at home to see if she could be excused from work that day; the team lead checked, but later called her back and informed her that she would have to report to work, and the claimant agreed.

The claimant reported for work as scheduled at 3:00 p.m. Shortly after clocking in, she saw her prior team leader who had been a mentor to her; the mentor saw that the claimant was upset and asked her what was wrong. The claimant then broke down and began crying. The mentor advised that the claimant go and speak to someone in human resources to get help, and escorted the claimant to human resources. Upon seeing the claimant's state of distress, the employer's human resources representative stated that the claimant should go home. The claimant pointed out that she was at seven points and that she did not want to risk losing her job by missing work that day; the human resources representative said she would discuss the situation with her superior. The claimant left the facility at approximately 3:45 p.m. and was home a short while later. The employer's human resources representative called her at home at approximately 4:30 p.m. and advised the claimant that she had discussed the situation with her superior, but that the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Absenteeism can constitute misconduct, however, to be misconduct, absences must be both excessive and unexcused. A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline for the absence under its attendance policy. Cosper, supra. Because the final absence was related to reasonable grounds, specifically that the employer had instructed the claimant to leave the premises due to her emotional state, the absence is excused, and no final or current incident of unexcused absenteeism occurred which establishes work-connected

misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 23, 2006 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/s