

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA AVERY
Claimant

APPEAL NO: 16A-UI-06879-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 05/22/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 17, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 8, 2016. The claimant participated in the hearing. Stacy Hoffman, Human Resources Assistant and Jacqueline Jones, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time returns inspections processor for Nordstrom from May 30, 2012 to May 20, 2016. The claimant suffered a work-related injury August 16, 2015, and was placed on light duty when she returned to work in October 2015 through May 20, 2016. The claimant's restrictions became permanent May 19, 2016, and the employer informed her it could not accommodate her lifting restrictions in the warehouse where the claimant worked but told her she was welcome to apply for other positions in the company that did not require lifting. The claimant must apply just like any other potential employee and does not receive any extra consideration for having been an employee in good standing at the time of the separation. The claimant is in the process of applying for a new job with the employer but has not secured a new position to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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).

While the employer did not cut all ties with the claimant, once she received her permanent restrictions as the result of a work-related injury, it would no longer accommodate those restrictions and effectively discharged the claimant as it did not allow her to continue working. Additionally, while the claimant is welcome to reapply for a job she is able to perform with the employer, she does not receive any preferential treatment, such as in a transfer situation, but must apply just like anyone else seeking employment from outside the company.

There is no allegation of misconduct on the part of the claimant and she did not voluntarily quit her job. The claimant's separation was due to a lack of work.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The remaining question is whether the claimant is able and available for work. While the claimant can no longer perform her previous position in the warehouse, there are many other types of work that do not involve heavy lifting that she is capable of doing. Consequently, the claimant is considered able and available for work.

The claimant was laid off due to a lack of work and she is able and available for work. Therefore, benefits are allowed.

DECISION:

The June 17, 2016, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason and is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs