

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M DVORAK
Claimant

APPEAL NO. 10A-UI-05385-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 03/14/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nordstrom, Inc. filed an appeal from a representative's decision dated April 2, 2010, reference 01, which held that no disqualification would be imposed regarding Angela Dvorak's separation from employment. After due notice was issued, a hearing was held by telephone on May 24, 2010. Ms. Dvorak participated personally. The employer participated by Chris Koeppel, Packaging Department Manager; Robin Poposil, Human Resources Manager; Chuck Wesbrook, Returns Assistant Manager; and James Jungjohann, Returns Inspections Manager. The employer was represented by Jennifer Coe of Talx Corporation. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Dvorak was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Dvorak was employed by Nordstrom, Inc. from November 20, 2006 until March 12, 2010. She was employed full time as a picking processor. She was discharged from the employment. The final incident that prompted the discharge occurred on March 11, 2010. On that date, she was sent to work in a department different from the one she usually worked in. She went as requested.

When Ms. Dvorak arrived in the returns department as directed, she was told that her services would not be needed. Her reply was, "Good. I didn't want to come anyway. I'd rather cut off my arm with a dull butter knife." Her comments were intended as a joke because the work in returns was seen as monotonous. The two managers who heard the comment did not take it as a joke. Because she had been disciplined in the past, Ms. Dvorak was discharged on March 12, 2010. She had received a final written warning on December 23, 2009 after she used the term "bull crap" in a conversation with a coworker.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In order for an individual to be disqualified from receiving benefits, the evidence must establish that the discharge was triggered by a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8).

In the case at hand, Ms. Dvorak's discharge was prompted by the comment she made on March 11, 2010. There was no angry outburst, name-calling, or use of profanity. She simply stated that she would rather cut off her arm with a dull butter knife than work in returns. It was an innocent comment that was intended as a joke. It did not evince a willful or wanton disregard of the employer's standards. It did not rise to the level of misconduct. The next most prior incident occurred on December 23, 2009. Conduct that occurred in December would not constitute a current act in relation to a discharge that occurred in March. For the above reasons, the administrative law judge concludes that the employer failed to establish that the discharge was predicated on a current act of misconduct.

It was the employer's prerogative to discharge Ms. Dvorak. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated April 2, 2010, reference 01, is hereby affirmed. Ms. Dvorak was discharged by Nordstrom, Inc. but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs