

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAPORSHA S PLEDGE

Claimant

APPEAL NO. 16A-UI-13209-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC

Employer

OC: 11/13/16

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 5, 2016, reference, 01, which denied unemployment insurance benefits, finding that the claimant was discharged from work on November 13, 2016, for excessive unexcused absenteeism. After due notice was provided, a telephone hearing was held on January 4, 2017, at which time the claimant participated personally. Although duly notified, the employer indicated they would not be participating in the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Laporsha Pledge was employed by Nordstrom Inc. from October 13, 2016 until November 13, 2016, when she was discharged from employment. Ms. Pledge was employed full-time assigned to the company's picking department and was paid by the hour. Ms. Pledge worked 5 a.m. to 1 p.m.

Under the company's "no fault" attendance policy, employees are subject to discharge if they accumulate eight attendance infraction points within a rolling period. Employees are assessed a half point for tardiness and are assessed a full point if they are absent for a full work shift. If an employee has good attendance for 30 days, one attendance infraction point is removed from their record. Employees are subject to discharge when they accumulate eight points.

The final infraction that caused Ms. Pledge's discharge took place on November 13, 2016. On that day, Ms. Pledge did not have transportation to the work place to begin her early morning shift, but called the employer to request work on the second or third shift that day when transportation would be available to her. The claimant called to report to the employer that she would be unable to report for her scheduled shift, prior to the beginning of the shift as required by company policy.

In response to the claimant's call in, the employer stated that although the claimant had not reached the eight points required to result in termination of employment, the company was nevertheless "letting you go".

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits; it does not.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not the issue in an unemployment insurance appeal. The 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 wrong-doing or repeated carelessness or negligence that equals willful misconduct in culpability. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

871 IAC 24.32(7) provides excessive unexcused absenteeism is an intentional disregard of the duty owed by 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.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. The evidence in this matter does not establish that the claimant had been absent excessively. The evidence in the record establishes that the employer elected to discharge the claimant before she had accumulated the sufficient number of attendance infraction points under its point system to result in termination.

The question before the administrative law judge in this case is not whether the employer has the right to discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Pledge may have been a sound decision from a management view point, for the above stated reasons, the administrative law judge concludes that the evidence in the record is not sufficient to establish intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 5, 2016, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs