

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON D JONTZ
Claimant

APPEAL NO: 11A-UI-11945-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 08/07/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Shannon D. Jontz (claimant) appealed a representative's August 30, 2011 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, a telephone hearing was held on October 5, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on September 26, 2011 and indicated that he would be available at the scheduled time for the hearing at a specified telephone number. When the administrative law judge called that number at the scheduled time for the hearing, the claimant did answer. Contrary to the recommendation on the hearing notice instructions, the claimant's phone was a cell phone. Shortly after the hearing was convened, the claimant's connection was lost or disconnected. The administrative law judge attempted to recontact the claimant, but she did not answer her phone and did not recontact the Appeals Section; therefore, the claimant did not participate in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from three witness, Robin Pospisil, Ryan Stokes, and Joe Magner. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, 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 April 6, 2004. She worked full time as a packaging processor. Her last day of work was July 27, 2011. The employer discharged her on July 28, 2011. The reason asserted for the discharge was unacceptable attendance.

The employer has an eight-point attendance policy. On July 6, 2011 the claimant was given a written warning advising her that she was over seven points, specifically, that she was at 7.75, so even a quarter point tardy could result in her discharge. Of her last 7.75 points, about four

were due to illness and the remainder were due to tardiness or absence for personal issues such as transportation.

On July 28 the claimant called to report she would be late because she had overslept. She expressed concern because she knew she was at the end of her points. After a discussion with Mr. Stokes, she was discharged due to her attendance.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The presumption is that oversleeping is generally within an employee's control. Higgins, supra. Absences due to issues that are of purely personal responsibility are not excusable. Higgins, supra; Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final tardy was not excused and was not shown to be due to illness or other reasonable grounds. She had excessive prior unexcused occurrences. The claimant had previously been warned that future occurrences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 30, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 28, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs