

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAWN M JELLISON**  
Claimant

**NORDSTROM INC**  
Employer

**APPEAL 16A-UI-05209-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/10/16**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the April 29, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her being discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 2, 2016. The claimant, Dawn M. Jellison, participated personally and through Attorney Matt Reilly. The employer, Nordstrom Inc., participated through Representative Thomas Kuiper; Human Resources Assistant Jill McDowell and Human Resources Manager Robin Pospisil.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a packing processor. She began her employment on March 27, 2013 and her employment ended on April 13, 2016. Her job duties included preparing customer orders for packaging and shipping. Gail Chipley was her supervisor.

Another employee reported to Ms. Chipley that drugs were being sold at work. Claimant's name was not mentioned by this employee. Upon learning this information Ms. Chipley reported the allegations to the Human Resources Department. This information was also reported to the Loss Prevention Department, including Mike Habermann. Mr. Habermann began video monitoring of the employees who worked in claimant's department. Upon reviewing the video monitoring Mr. Habermann discovered two incidents between claimant and another co-worker named Joe which he brought to Ms. Pospisil's attention. Ms. Pospisil reviewed the video tape of the two incidents with Mr. Habermann. In chronological order, the first incident showed Joe

approach claimant's workstation and retrieve an item from her bag. Joe reached across claimant to get into her bag. Joe then returned and put an item into claimant's bag. Claimant then took an item out of her bag and put it into her pocket. The items are not identifiable on the video tape.

The second incident occurred on March 22, 2016. On this date the video tape shows Joe approach claimant's workstation and he takes an item from claimant's bag. Claimant is speaking to him during this time. There was no audio from the video tape. Approximately ten minutes later Joe returns to claimant's workstation and sets an item down on her station. The item taken out of the bag and the item put on the workstation were not identifiable in the video tape.

After reviewing the video tapes Ms. Pospisil and Mr. Habermann conducted an interview with the claimant. This interview was conducted on April 7, 2016. Claimant was in the office on this date to discuss a leave of absence with another human resources employee. She was told that her leave of absence would be approved and then was instructed to visit with Ms. Pospisil and Mr. Habermann.

During this conversation Ms. Pospisil and Mr. Habermann asked the claimant several questions, including whether or not she allowed co-workers to retrieve items from her personal bag. She replied that she did and that she typically had candy or over the counter medications available in her bag. This was common knowledge to many of her co-workers and they would approach her on occasion to retrieve these items from her. According to claimant this was not a rare occurrence.

Claimant was specifically asked what her relationship with Joe was. Claimant responded that he was a co-worker but that he was not a friend of hers outside of work. When asked whether or not she was selling her prescription pain medication she responded stating "no". When asked whether or not she ever mentioned to anyone else that she was selling her prescription pain medication she responded stating "no".

Mr. Habermann then stated to claimant that they had several resources that they use when conducting an investigation, including video surveillance. At this time claimant began to cry and asked if she was going to lose her job. Ms. Pospisil replied that she did not know. Claimant then admitted that she sold her prescription pain medication to Joe. Ms. Pospisil told claimant they would contact her in a few days and let her know their decision. She gave claimant her business card and Mr. Habermann wrote his telephone number on the business card as well in case she had any further information to give to either of them. This meeting occurred on a Thursday. Claimant was not scheduled to work the following week as she was exercising her Family and Medical Leave Act ("FMLA") leave. Ms. Pospisil called claimant on the telephone the following Wednesday, April 13, 2016 and notified her that she was being discharged from employment. Claimant replied that she had been tricked, that she should have been able to have another person in the meeting with her, and that she was getting a lawyer.

Prior to this incident claimant had no prior discipline with the company. She had received very good performance reviews and had received raises in pay. The employer has a written policy against using prescription drugs contrary to its prescription at work. This would include a sale or gift of a prescription drug to another person for whom it was not prescribed.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was a discharge for job related misconduct. Benefits are denied.

Ms. Popisil contends that claimant admitted to selling her prescription drugs to another co-worker at work. Claimant contends that she never made such an admission and did not sell her prescription drugs to another co-worker at work. This case turns on the credibility of the parties.

It is my duty, as the administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). I assessed the credibility of the witnesses who testified during the hearing and considering the applicable factors listed above, and using my own common sense and experience, I find Ms. Pospisil's version of events to be more credible than the claimant's recollection of those events.

I find Ms. Pospisil's testimony credible for several reasons. By all accounts claimant was a very good worker. She had never been disciplined, received very good performance reviews, and was given raises in pay. This was so even though she had exercised her leave rights under FMLA. There would be no incentive for an employer to discharge a good worker unless an incident like this did occur. Claimant contends that the employer wanted to discharge her due to the fact that she was going to take a leave of absence. However, the employer approved her leave of absence just before the meeting took place on April 7, 2016. There is no link that claimant has proven between her taking FMLA or a leave of absence and the employer's motive to fabricate a story in order to discharge her.

Lastly, claimant made an inconsistent statement during her testimony that she did not have people asking her for pain pills. Later she admitted that she did have people asking her for pain pills. While claimant contends that she was referring to Advil as her pain pills and not her prescription pain medication, this does not relieve the inconsistency in that claimant first testified that it was common place for co-workers to get pain pills from her bag but then later stated that she told them to stop but never reported it to employer.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The claimant admitted to selling her prescription drugs to a co-worker at the April 7, 2016 meeting. This was in violation of the employer's written policy, which claimant received a copy of and was aware of. Claimant's violation of this written policy constitutes misconduct.

The employer has presented substantial and credible evidence that claimant was acting against the best interests of the employer when she violated this written policy. This is misconduct sufficient to warrant a denial of benefits without prior warning. As such, benefits must be denied.

**DECISION:**

The April 29, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for job related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/pjs