

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TAMMY S O'HARE
348 W 1ST ST
DUBUQUE IA 52001

NORDSTROM DISTRIBUTION MGMT INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

AMENDED

Appeal Number: 05A-UI-11858-DWT
OC: 01/16/05 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Nordstrom Distribution Mgmt., Inc. (employer) appealed a representative's November 9, 2005 decision (reference 01) that concluded Tammy S. O'Hare was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2005. The claimant participated in the hearing. Michael Sloan, a representative with TALX, appeared on the employer's behalf with Jody Bryson, Kathy Cattrell, Darla Matthews and Marie Castaneda. During the hearing, Employer's Exhibit One and Two were offered and admitted as 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.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for employer on June 3, 2002. The claimant worked as a full-time processor. Bryson was the claimant's supervisor. The claimant received a copy of the employer's work rules. The employer's policy informed employees they would be discharged if there were involved in any theft. Also, the employer's recording system, PEP, credited employees for their work efforts so employees needed to record information honestly and accurately. (Employer's Exhibits One and Two.)

Prior to October 3, 2005, the claimant's job was not in jeopardy. The claimant was an employee who consistently had high production. The employer considered a PEP reading of 70 as normal and anything over 80 was high and received a commission.

On October 3, based on the claimant's PEP report, she had a production of 188. This high number prompted the employer to investigate. The employer reviewed the production management system that records all steps of the process. The computer system recorded the claimant had processed 10 cases, not the 19 cases she had reported on October 3. The computer system also indicated the claimant used a bulk scanner on the order she processed, not the store scanner that scanned each item individually. The employer's computer indicated a co-worker processed 9 of the 19 cases. When the employer asked the co-worker about what work she had done on October 3, her report was verified by the computer system. The employer also reviewed surveillance tape and saw the claimant using a bulk scanner instead of the store scanner. When an employee scans each product individually, the employee earns more pay than when the employee used a bulk scanner.

After the employer received the computer information, the claimant's supervisor talked to the claimant. Even though the employer presented to the claimant the information the computer management systems revealed, the claimant stood by her initial report that she processed 19 cases and individually scanned product on October 3, 2005.

Based on the computer information, the report from a co-worker and the surveillance tapes, the employer concluded the claimant falsified or manipulated information on a business record so she would receive more money. On October 8, 2005, the employer discharged the claimant for falsifying information that would have resulted in paying her more money than the claimant was entitled to receive.

The claimant reopened her claim during the week of October 9, 2005. The claimant filed claims for the weeks ending October 22 through November 26, 2005. The claimant received a total of \$1,712.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known she had an obligation to accurately report her production and if she did not, she could be discharged. Even though the claimant asserted she processed 19 cases by using a store scanner on October 3, a preponderance of the evidence indicates she only processed 10 cases by using a bulk scanner. The claimant intentionally misrepresented the amount of work she performed on October 3, 2005. The evidence establishes the claimant committed work-connected misconduct. As of October 9, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 22 through November 26, 2005. The claimant has been overpaid \$1,712.00 in benefits she received for these weeks.

DECISION:

The representative's November 9, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 9, 2005. 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. The claimant is not legally entitled to receive benefits for the weeks ending October 22 through November 26, 2005. The claimant has been overpaid and must repay a total of \$1,712.00 in benefits she received for these weeks.

dlw/pjs/kjw