

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN E SCHADE
Claimant

APPEAL NO. 09A-UI-14866-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

**Original Claim: 09/06/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 29, 2009, reference 01, that held she was discharged for excessive unexcused absenteeism and tardiness on September 10, 2009, and that denied benefits. A telephone hearing was held on November 3, 2009. The claimant participated. The employer elected not to participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds that: The claimant worked as a full-time packing processor from May 8, 2000 to September 10, 2009. The employer has an attendance policy based on a point system for occurrences, and it considers an absence due to a properly reported illness as one point. The claimant was discharged on September 10, 2009 for excessive absences, which did contain properly reported illness and other excusable reasons for missing work.

The employer requested not to participate in this hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the 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.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on May 11, 2009, for excessive "unexcused" absenteeism.

The employer has the burden to establish job-disqualifying misconduct, and it elected not to participate in this hearing and do so.

DECISION:

The decision of the representative dated September 29, 2009, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on September 10, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw