

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID H WHITESIDE
Claimant

NORDSTROM INC
Employer

APPEAL 15A-UI-07512-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 24, 2015, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 31, 2015. Claimant participated. Employer participated through representative Michele Hawkins, Corey Cook, and Rick Scott. Kris Smith and Jacqueline Ahrens were present for the hearing, but did not testify. Employer Exhibit One was admitted into evidence without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a seasonal customer returns processor from May 12, 2014, and was separated from employment on June 10, 2015, when he was discharged.

The employer has a progressive disciplinary policy and a code of business conduct and ethics, but it does depend on the severity of the offense on whether the progression will be followed. Employer Exhibit One. Claimant was aware of the progressive disciplinary policy and a code of business conduct and ethics. Employer Exhibit One. The policy prohibits harassment between employees.

Claimant previously did seasonal work for the employer from November 21, 2013 through January 23, 2014. On January 14, 2014, claimant received a verbal warning for responding to a boss in an undermining tone (January 10, 2014) and shoving another employee's desk back a couple feet (January 13, 2014). Claimant was told that if any a similar incident were to occur, he could be disciplined, including discharged from employment. However, claimant testified he did not receive any discipline for these incidents.

On May 21, 2015, claimant was helping a couple of employees change some blades. A team lead came over to their area and inquired as to what was going on. Claimant informed the team

lead that he was helping the employees change some blades. The team lead then left the area and claimant chased the team lead down. Claimant told the team lead to back off. Claimant did not receive a warning for this incident. Claimant testified that this incident did not happen.

On June 5, 2015, another employee (hereinafter "employee A"), noticed plastic on the cardboard line. Employee A asked a group of employees, including claimant, to not put plastic on the cardboard line. Mr. Clark testified that claimant told employee A to "shut up, we do what we want." A different employee in claimant's group told employee A she was a trouble maker. Employee A went to her supervisor and reported the incident. Employee A thought the other employees were taking claimant's side and she was scared for her safety. Mr. Clark spoke with claimant about the incident and claimant denied saying anything to employee A. Mr. Clark then spoke with some of the other employees that were there and they said claimant did say something to employee A. Mr. Clark then spoke with claimant again. Mr. Clark testified that claimant admitted to saying something to employee A. Mr. Scott testified he was present for both conversations with claimant. Claimant testified that he never said anything to employee A.

Claimant and employee A both worked the next two working days (June 8, 2015 and June 9, 2015) while Mr. Clark finished his investigation. However, employee A was moved to a different location that was not in the same department as claimant because she was fearful of claimant.

On June 10, 2015, claimant met with Mr. Clark. Mr. Scott was also present during this meeting. Mr. Scott testified claimant agreed that he had a hot temper. Claimant was discharged from employment because of the June 5, 2015 incident and because of his history from January 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

It is the duty of an 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).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted by both parties and noted the dates when the witness statements were written. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

The employer has presented substantial and credible evidence that claimant's conduct with employee A caused employee A to feel fearful for her safety. Claimant knew about the employer's policy prohibiting harassment. Claimant's comments, in the manner in which they were made, caused employee A to fear for her safety. The employer has a duty to protect the safety of its employees. To that end, the employer put employee A in a different department from June 8, 2015 through June 9, 2015, so that she would not have to interact with claimant while Mr. Clark finished his investigation. Claimant had been previously warned about his conduct with other employees. Claimant's threat of harm was contrary to the best interests of the employer and the safety of his coworker.

The employer has presented substantial and credible evidence that claimant's conduct, after having been warned on January 14, 2014 for his behavior, was harassing. This is disqualifying misconduct.

DECISION:

The June 24, 2015, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs