

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAMISHA D SCHUPANITZ
Claimant

APPEAL NO. 13A-UI-11134-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 09/01/13
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kamisha Schupanitz, filed an appeal from a decision dated September 24, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 23, 2013. The claimant participated on her own behalf. The employer, Nordstrom, participated by Human Resources Assistant Ryan Eichhorn and was represented by TALX in the person of Tom Kuiper.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kamihsa Schupanitz was employed by Nordstrom from May 1, 2006 until September 5, 2013 as a full-time receiving processor. The company code of conduct prohibits cell phones in the work area. This is because the receiving department has confidential customer information such as names, addresses, and credit card numbers. The concern is that cell phones are frequently also “recording devices” and images could be taken of this information and used inappropriately.

On September 5, 2013, the claimant had taken her cell phone out of her purse and was using it in the break room to coordinate an emergency dental appointment for her son. By the time she had completed this it was time to go back to work and she did not have the opportunity to return the phone to her purse.

She turned off the cell phone and put it in her pocket. This was seen by a member of management who, instead of reminding her to put it in her purse, reported the matter to Manager James Jungjohann. He approached her and asked if she had her cell phone and she stated she did but it was turned off.

The claimant and other staff had been told by a previous manager it was okay to have the cell phone with them as long as it was not turned on and it was this upon which she based her

actions that day. Mr. Jungjohann said he was not sure what the policy was exactly and would have to consult with human resources. He came back shortly and said she would have to leave because having the cell phone on her person was a violation of the code of conduct.

Ms. Schupanitz had received a final written warning on August 1, 2013, for unprofessional conduct and failing to follow procedure. She had come in the door and not yet swiped her card, which she usually did at the second door. An unidentified person sitting nearby on a couch rudely chastised her and ordered her to swipe in. She said she would swipe in as she had done for the past seven years.

The employer's policy states having a cell phone in the work area could lead to discharge "up to and including discharge" but has no firm criteria of when discharge will be imposed or a lesser disciplinary action.

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(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.

The claimant admitted to having her cell phone with her in the work area when she did not have enough time to return it to her purse at the end of break. This was the only occasion such an incident occurred in seven years of employment. It was an exception because she had been using the phone while on her break and did not have time to return it to her purse.

The employer was unable to establish what the criteria are for determining whether discharge will occur for one incident or some lesser disciplinary action.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The administrative law judge cannot conclude this one incident under these circumstances rises to the level of substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

DECISION:

The representative's decision of September 24, 2013, reference 01, is reversed. Kamisha Schupanitz is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs