

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

PENNY L LIGHT
Claimant

APPEAL NO: 19A-UI-08183-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 09/22/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 9, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 7, 2019. The claimant participated in the hearing. Coree Larson, Human Resources Advisor; Tiffany Vinton, Supervisor of Customer Service; and Susen Zevin, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer care lead for Nordstrom from October 25, 2010 to September 24, 2019. She was discharged for hanging up on a verbally abusive customer.

The claimant handled “escalated” customer. On September 21, 2019, the claimant took a call from a customer who was very upset and screaming at her because he was not eligible for a refund. The customer called the claimant a “stupid fucking bitch” and the claimant hung up on him. She testified she did so on instinct. The claimant then immediately reported her actions to Supervisor of Customer Service Tiffany Vinton. She was not aware that hanging up on a verbally abusive customer would lead to her termination and she had never disconnected a customer before. The employer sent the claimant home for the remainder of the day and terminated her employment September 24, 2019.

On August 13, 2019, the claimant received a final written warning for failure to communicate positively and sounding friendly when speaking to internal and external customers. The warning stemmed from a phone call the claimant had August 7, 2019, with an internal customer. The claimant said, “I don’t know why you are getting so excited with me.” The employer did not believe the call was “extreme” but felt there were trends in the claimant’s tone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant should not have hung up on the verbally abusive customer, it was instinctive as he was using profanity and was calling her names. That was an isolated incident, however, as the claimant had never hung up on a customer in her nearly nine-year tenure with the

employer. She was warned about her tone in August 2019 but not about disconnecting a customer.

Under these circumstances, the administrative law judge finds the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 9, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn