

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

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CEDAR RAPIDS IA 52404-3890

NORDSTROM INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-06095-ET
OC: 05-07-06 R: 03
Claimant: Respondent (1)

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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 1, 2006, 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 July 18, 2006. The claimant participated in the hearing. Shannon Chapman, Assistant Manager Human Resources and James Jungjohann, Picking Department Manager participated in the hearing on behalf of the employer with Attorney Peg Heenan.

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 picker for Nordstrom Inc. from February 5, 2004 to May 9, 2006. On May 8, 2006, the claimant hurt her back while working on the line. On May 9, 2006, the claimant told her supervisor she hurt her back and filled out an accident report. At 9:00 a.m. she went to the supervisor crying and said her back really hurt and asked if she could use her scheduled time off and he indicated she could do so but would be assessed an attendance point which would have pushed her over the point limit. She asked what her options were and they went to speak to the safety coordinator. The employer told the claimant she could work in the inspections department where she would be allowed to sit, but the claimant did not think she could do that without pain. The claimant told the safety coordinator she wanted to see her chiropractor and was told workers' compensation did not cover chiropractic care so the claimant would have to pay out-of-pocket and make up her hours. The claimant clocked out at 9:10 a.m. without telling the employer she was leaving. She went to her chiropractor and was told she did not have insurance because she had not worked enough hours to qualify because she had been on FMLA due to a condition suffered by her daughter so she went home and took two Motrin. She did not call the employer to tell it she would not be in to make up her hours. On May 10, 2006, the claimant called and left a message for the employer and on May 11, 2006, she called and left a message stating she assumed her employment was terminated because she exceeded the allowed number of attendance points.

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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant injured her back while at work on May 8, 2006, and was in pain on May 9, 2006. She asked if she could use scheduled time off the following day because she did not have any paid time off left and the employer denied her request. She asked if she could go to her chiropractor and then return and make up her hours and while the employer granted her request, she was unable to do so because she could not see her chiropractor as her insurance would not cover it. When the claimant was unable to return to work on May 9 or May 10, 2006, she correctly assumed she had exceeded the allowed number of attendance points and would be discharged. Consequently, the administrative law judge concludes the claimant's absence was due to a work-related injury and as such does not rise to the level of disqualifying job misconduct. Therefore, benefits are allowed.

DECISION:

The June 1, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/cs