

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

DAWN M FRANKS  
1447 GAME CLUB RD  
CENTRAL CITY IA 52214

NORDSTROM INC  
c/o TALX UCM SERVICES  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02607-HT  
OC: 01/30/05 R: 03  
Claimant: Respondent (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Nordstrom, filed an appeal from a decision dated March 3, 2005, reference 01. The decision allowed benefits to the claimant, Dawn Franks. After due notice was issued a hearing was held by telephone conference call on March 30, 2005. The claimant participated on her own behalf. The employer participated by Senior Team Leader Heather Anderson and was represented by TALX in the person of Peg Heenan. Exhibits One and Two were admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Dawn Franks was employed by Nordstrom from April 19, 2004 until February 3, 2005. She was a full-time personal shopper.

Ms. Franks received a written warning on November 23, 2004, for absenteeism. She had accumulated 7.5 attendance points and discharge could occur when 8 points was reached. The warning itself notified her of this.

On January 23, 2005, the claimant failed to punch in at the beginning of her shift as required. A correction form was prepared and she signed that she had arrived at 8:00 a.m. as scheduled. However, the employer was concerned about this because she was so close to the discharge level and referred the matter to the loss prevention investigator who reviewed the video tapes. The tape showed Ms. Franks at the time clock at 8:03 a.m. on January 23, 2005, but she had not punched in. In addition, by signing the correction for that she had arrived at 8:00 a.m., she had falsified the time card. When the investigation was complete the claimant was discharged by Senior Team Leader Heather Anderson and Human Resources Manager Robin Pospisil.

Dawn Franks has received unemployment benefits since filing a claim with an effective date of January 30, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

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 claimant had been advised her job was in jeopardy as a result of her absenteeism. The employer has presented evidence that she was late to work on January 23, 2005, and instead of using the time clock when she arrived, she reported she had "forgotten" to punch in and could therefore indicate she had arrived on time. The photo contained in Exhibit One shows the claimant at the time clock after 8:00 a.m., but she could not provide any explanation as to why she did not clock in at that time. It is obvious she did not "forget" to clock in because she was standing by the clock, but chose to falsify her arrival time, apparently to avoid getting another one-half attendance point which could result in her discharge. The late arrival, combined with the falsification of the time records, constitutes fraud and conduct not in the best interests of the employer. This is misconduct for which she is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 3, 2005, reference 01, is reversed. Dawn Franks is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,016.00.

bgh/sc