

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL PERTZSCH
Claimant

APPEAL NO: 10A-UI-11497-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

OC: 07-18-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 13, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 21, 2010. The claimant participated in the hearing with former employee Angela McNitt. Robin Pospisil, Human Resources Manager; Aaron Mitchell, Assistant Facilities Manager; and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 packaging processor for Nordstrom from April 19, 2004 to July 22, 2010. The employer uses a no-fault, point based attendance policy. Employees receive one-quarter of a point if they leave early or are tardy up to two hours; one-half point if they leave early or are tardy between two and four hours; and one point if they leave early or are tardy between two and four hours or absent all day. Employees are terminated upon reaching eight points. One point drops off if an employee maintains perfect attendance for a period of one month but otherwise points do not drop off after a given amount of time. The employee's manager meets with him following each absence to inform him of his point total. The claimant started the year 2009 with .25 points. He accumulated one point due to illness for absences January 30, 2009; February 20, 2009; March 18, 2009; June 18, 2009; June 29, 2009; July 28, 2009; September 11, 2009; October 5, 2009; October 19, 2009; December 22, 2009; January 22, 2010; February 22, 2010; April 1, 16 and 28, 2010, and July 1, 2010. He clocked in late and received .25 point March 11, 2009, and requested but was denied May 28, 2010, off work and called in anyway and said he would not be in and received one point. Points were deducted for perfect attendance January 21, 2009; April, May, June, August, November and December 2009 and January, February and March 2010. The claimant received a written warning July 7, 2010, for his July 1, 2010, absence because that absence placed him above seven points, for a total of 7.50 points. On July 22, 2010, the claimant called in and reported his

car would not start. His supervisor told him he could retain his job if he could find a ride and make it to work by 8:00 a.m. but the claimant told him he did not have any way to get there. The employer called him around 11:45 a.m. and his supervisor notified him that his employment was terminated for exceeding 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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant did violate the employer's attendance policy, all but 2.25 of his accumulated points were due to properly reported illness. Under these circumstances, the administrative law judge must conclude that 2.25 points gained over a period of at least 19 months does not rise to the level of excessive, unexcused absenteeism as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 13, 2010, reference 01, decision is reversed. 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/pjs