

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN O MCCLAY
Claimant

NORDSTROM INC
Employer

APPEAL 19A-UI-01179-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/13/19
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Dawn O. McClay (claimant) filed an appeal from the February 1, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Nordstrom, Inc. (employer) by failing to report to work or notify the employer for three days. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2019. The claimant participated personally. The employer was represented by Ted Valencia of Equifax and participated through HR Coordinator Breanna Jacobs and Customer Returns Assistant Manager Jamie Woolf. No exhibits were offered into the record.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Customer Return Associate beginning on June 26, 2018, and her last day worked was December 26, 2018. The claimant reported to Customer Returns Assistant Manager Jamie Woolf.

The employer has a policy that if employees need to miss work they must notify the employer through an attendance hotline. The manager of each employee's department is then required to check the messages each shift to record who will be absent and why. In the claimant's department on third shift, the responsibility of checking the attendance line was given to Woolf. The employer's attendance policy also states three consecutive no-call/no-show absences will

be considered a voluntary resignation. The claimant had received a copy of the employer's policies.

The claimant was in a car accident in mid-December. She told Woolf about the accident and indicated she may need additional time off. Woolf advised her to try filing for a leave of absence. The claimant requested leave but was denied. The claimant was scheduled to work December 27, December 30, and January 1, 2019. The claimant missed work those days because she did not have a vehicle and did not notify the employer of her absences. Woolf reached out to the claimant via telephone and email each day; however, she did not receive a response. On January 3, the employer notified the claimant it had accepted her resignation due to the three no-call/no-show absences.

The claimant requires a vehicle not only to get to work but also assist in getting her child care provider to her house to watch her children. The claimant was without a vehicle from January 13 through February 23.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.5(1) provides:

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

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following

factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. As the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer's policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Benefits are denied.

As benefits are denied, the issue of whether the claimant is able to and available for work is moot.

DECISION:

The February 1, 2019, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant is able to and available for work is moot.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn