

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

PAMELA J GUILFORD

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

Appeal Number: 04A-UI-05474-CT
OC: 04/18/04 R: 03
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Pamela Guilford filed an appeal from a representative's decision dated May 5, 2004, reference 01, which denied benefits based on her separation from Nordstrom, Inc. After due notice was issued, a hearing was held by telephone on June 8, 2004. Ms. Guilford participated personally and Exhibit A was admitted on her behalf. The employer participated by Adam Seed, Contact Center Manager, and Heather Anderson, Contact Center Team Leader. The employer was represented by Joyce Habel of Talx UC Express. The hearing record was left open to allow Ms. Guilford an opportunity to provide medical evidence. She had not submitted the documentation by June 16 and, therefore, a message was left for her to contact the administrative law judge. As of June 18, she had not returned the call. Therefore, the hearing record was closed on June 18, 2004.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Guilford was employed by Nordstrom, Inc. from April 12 through April 21, 2004 as a full-time personal shopper. She was discharged for using profanity on the calling floor and for sleeping on the job.

Ms. Guilford received a paycheck on April 20. She commented to another employee that the checks were "fucking huge." The statement was made on the calling floor and potentially could have been overheard by customers talking with other workers. It was also reported that she used terms such as "shit" or "damn it" while on the telephone with customers if she was having difficulties. It was also observed on April 20 that Ms. Guilford was sleeping while on duty. She was observed from a distance of approximately five feet. When questioned, she indicated that she had been kept up with a sick child the night before. She was notified of her discharge on April 21, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Guilford was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Guilford knew or should have known that profanity was inappropriate at the workplace and that such language could possibly be heard by customers. She also knew or should have known that sleeping on the job was contrary to the employer's standards.

The only medical documentation provided by Ms. Guilford indicated that she was being treated for sleep apnea but could still work. The administrative law judge requested information as to the symptoms of sleep apnea and whether it would account for Ms. Guilford falling asleep at work. Ms. Guilford did not present the requested information from her doctor and did not advise the administrative law judge that she was having any problem obtaining the information. Given her failure to provide the documentation, the administrative law judge concludes that she has failed to establish that her sleeping at work was due to a medical condition.

Ms. Guilford's sleeping on the job and her use of profanity on the calling floor constituted a substantial disregard of the type of behavior the employer had the right to expect. For the above reasons, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 5, 2004, reference 01, is hereby affirmed. Ms. Guilford was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b