

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

SANDRA L LUSTGRAAF
1954 JORDAN CREEK RD NE
SOLON IA 52333

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

Appeal Number: 05A-UI-02067-DWT
OC: 01/23/05 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

STATEMENT OF THE CASE:

Nordstrom, Inc. (employer) appealed a representative's February 18, 2005 decision (reference 01) that concluded Sandra L. Lustgraaf (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2005. The claimant participated in the hearing. Peg Heenen, a representative with TALX, appeared on the employer's behalf with Robin Pospisil, Adam Seede and Allen Burgin as witnesses. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment with good cause or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 22, 2004. The claimant worked as a full-time personal shopper.

On July 26, 2004, the employer gave the claimant her first and final warning for an inappropriate comment at work. The warning indicated a future incident of a similar nature would result in the claimant's termination. (Employer's Exhibit One.) On September 3, 2004, the employer talked to the claimant about a comment she made to a friend that indicated the friend received a promotion because of her race. After the employer talked to the claimant, the claimant understood she would be discharged the next time she made such a comment at work.

On November 26, 2004, an employee, Burgin, reported comments the claimant made that offended or embarrassed him. The claimant directed one comment about how Burgin had sex if he did not like sex. Comments Burgin heard the claimant make about her autobiography were not made directly to him, but he overheard them. Burgin heard someone make a comment about his buns, but the claimant did not make this remark. Burgin reported the comments he considered offensive to his supervisor.

On November 26, 2004, the employer discharged the claimant for again making inappropriate and unprofessional comments at work. Although the claimant and her immediate co-workers may have regularly conversed about the above subject matter, management had not previously received complaints and no one told the claimant she could not "joke" with her co-workers in this manner.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood she could be discharged if she made inappropriate comments at work. In July, the employer talked to the claimant about using profanity at work and in September the employer talked to the claimant about making racial comments. The facts reveal on November 26, the claimant and her co-workers were joking around with one another when Burgin came into the area. The claimant's one direct comment to him was unprofessional and inappropriate. Even though Burgin heard other comments, the claimant did not direct any other comments to him. The claimant denied making any comment about his buns. Each time the claimant made an inappropriate, unprofessional comment it was in a different context or subject matter. Under the facts of this case, the evidence does not establish that the claimant intentionally disregarded the standard of behavior the employer has a right to expect from employees. Instead, she used poor judgment. The employer established a compelling business reason for discharging the claimant after she made a third inappropriate comment. The facts do not, however, establish that the claimant intentionally made comments that offended co-workers. Therefore, as of January 23, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 18, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 23, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf