

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSIE J PEARSON**  
Claimant

**APPEAL NO. 11A-UI-09660-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORDSTROM INC**  
Employer

**OC: 06/19/11**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated August 16, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 16, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. David Williams participated in the hearing on behalf of the employer with witnesses, Kalee Dolan, Ron Westbrook, and Devin Van Dolah. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a receiving processor in the receiving department from May 22, 2006, to June 22, 2011. She was informed and understood that under the employer's work rules, she was required to use a time clock when she arrived and when she left work. If she missed a punch, she was required to accurately report her time and could be terminated if she recorded time not actually worked for the employer.

The claimant received a warning on June 22, 2010, because she was at 7.25 attendance points and told she could be discharged if she reached 8 points. The claimant had received 19 attendance warnings during the course of her employment.

The claimant's start time was 1:00 p.m. on June 15, 2011. The claimant left her home late on June 15 and arrived at work at 1:09 p.m. She failed to punch in when she arrived at work. At her lunch break, she manually entered 1:00 p.m. as when she arrived at work. She willfully misrepresented her arrival time at work to avoid getting an attendance point for being late for work.

Her supervisor discovered the discrepancy on June 22, 2011, when he was reviewing her time sheet and compared the transaction log that shows when she swiped her entry fob to enter the building. When the supervisor questioned the claimant, she admitted it was possible that she entered her time wrong to avoid an attendance point. As a result of the claimant's attendance warnings and misreporting her time, the employer discharged the claimant on June 22.

The claimant filed for and received in unemployment insurance benefits since filing for benefits effective June 19, 2011.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that she forgot to punch in and then when she entered her time she also forgot that she had arrived late for work. Instead, I believe Westbrook's testimony that the claimant admitted that it was possible that she entered the wrong time to avoid an attendance point.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated August 16, 2011, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs