

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

DAWN M JELLISON

Claimant

and

NORDSTROM INC

Employer

:
:
:
:
:
:
:
:
:
:
:
:

HEARING NUMBER: 16B-UI-05209

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board strikes the last sentence of the fifth paragraph on page 3 of the Administrative Law Judge's decision. We do so because the Administrative Law Judge refers to the Claimant proving a link between her need for FMLA and the termination. The Claimant does not have a burden of proof in a discharge case. Rather, the Employer must prove that the stated reasons for the discharge are the true reasons, and that those reasons constitute misconduct. We find the Employer's evidence credible, and conclude that the stated reasons for discharge are indeed the true reasons. Further, we concur with the Administrative Law Judge in finding that the Claimant's actions proven by the Employer to have caused the discharge were indeed misconduct.

We would make the same credibility determination even ignoring the Claimant's inconsistent statement discussed by the Administrative Law Judge. The main evidence pointing to FMLA as a reason for the discharge is the timing. We are mindful that temporal proximity, although relevant, is rarely sufficient by itself to lead a fact finder to find a causal link between a termination and an activity of the fired worker. *E.g. Haas v. Kelly Serv., Inc.*, 409 F.3d 1030, 1037 (8th Cir. 2005). In this case we find that the Employer's convincing and candid testimony is sufficient to overcome any inference of improper motive suggested by timing.

The Claimant's argues that Ms. Pospisil saying they "needed evidence after the meeting is tantamount to an admission that Dawn had not admitted to selling prescription medication." This is not convincing. Ms. Pospisil's testimony is consistent with the idea that the Employer wanted independent evidence, aside from the Claimant's admission, because otherwise the Claimant could do exactly what she is doing here – deny she made an admission. We find nothing in this to undermine Ms. Pospisil's credibility. We certainly do not find that Ms. Pospisil admitted impliedly or otherwise that the Claimant did not admit her wrongdoing.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

RRA/fnv