

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

ELEXIA TURK  
UNIT A  
1401 K ST SW  
CEDAR RAPIDS IA 52404

NORDSTROM INC  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-11857-DWT  
OC: 10/23/05 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Nordstrom, Inc. (employer) appealed a representative's November 10, 2005 decision (reference 01) that concluded Elexia Turk (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2005. The claimant participated in the hearing. Peg Heenan, a representative with TALX, appeared on the employer's behalf. Corey Clarke, Jessica Hawk, and Susan Edmunds appeared on the employer's behalf as witnesses. During the hearing, Employer's Exhibits One and Two were 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 4, 2005. The claimant worked as a part-time personal shopper. Hawk was the claimant's most recent supervisor. The claimant knew that in accordance with the employer's attendance policy, employees would be discharged if they accumulated eight attendance points. On September 26, 2005, the claimant received a warning for accumulating 7.75 attendance points. As of September 26, the claimant had been absent four days and was late for work 10 times.

Prior to October 25, 2005, Hawk talked to the claimant several times about the clothes she wore to work and gave her more than one copy of the employer's dress guidelines. The employer had a business casual dress policy, which allowed employees to wear jeans, but no sleepwear or athletic inspired pants or shorts. (Employer's Exhibit One.) The policy also informed employees that if an employee were asked to go home and to change into appropriate clothes, the employee would receive attendance points.

In August, Edmonds and the claimant talked about a pair of blue drawstring pants the claimant wore to work. Edmonds understood another manager had allowed the claimant to wear the pants so Edmonds did not say anything about the claimant's clothing. Prior to October 25, when the claimant wore the blue drawstring pants, the employer did not send her home. Hawk had sent the claimant home to change other clothes and assessed the claimant attendance points when she did not wear appropriate clothes to work.

On October 25, 2005, the claimant came to work in her blue drawstring terry cloth or velour pants. Hawk and Clarke decided the pants violated the employer's dress code and told the claimant she had to go home to change. When the claimant left to go home, she would accrue at a minimum 0.25 points, which gave her 8 attendance points. The employer discharged the claimant for violating the employer's attendance policy.

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 employer established business reasons for discharging the claimant. On October 25, the claimant reported to work on time. The only reason the claimant accumulated eight attendance points this day was because the employer decided she violated the employer's dress code by wearing inappropriate pants. Even though the employer had sent the claimant home before for failing to follow the dress code, the claimant had previously been allowed to wear the same pants she wore on October 25, 2005. Since the claimant had been allowed to work while wearing these pants in August, the evidence does not establish that the claimant intentionally violated the employer's dress code policy. Under the facts of this case, the claimant did not commit work-connected misconduct. As of October 23, 2005, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's November 10, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 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/pjs