

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**GRANDRY M KINUANI**  
Claimant

**NORDSTROM INC**  
Employer

**APPEAL 22A-UI-19970-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/13/22  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Grandry M. Kinuani, the claimant/appellant, filed an appeal from the Iowa Workforce Development (IWD) December 19, 2022 (reference 01) unemployment insurance (UI) decision. The decision denied Mr. Kinuani REGULAR (state) UI benefits because IWD concluded that the employer discharged him from work on August 8, 2022 for conduct not in the best interest of the employer. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to Mr. Kinuani and the employer. A telephone hearing was held on January 19, 2023. The undersigned administrative law judge heard Appeals 22A-UI-19970-DZ-T and 22A-UI-19971-DZ-T together and created one hearing record. Mr. Kinuani participated personally through a CTS Language Link French interpreter. The employer participated through Cody Frasier, process training manager and Connie Hickerson, Equifax hearing representative. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Did the employer discharge Mr. Kinuani from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Kinuani began working for the employer on July 16, 2018. He worked as a full-time warehouse processor, and as of March 2022, he worked as a warehouse trainer. His employment ended on August 12, 2022.

The employer's policy provides that employees are to use good judgment to take care of co-workers and customers, act in a professional manner and comply with the employer's guidelines. Ms. Frasier went over the policy with employees, including Mr. Kinuani.

On July 2, 2022, an employee reported to their manager that Mr. Kinuani, the employee's trainer, had asked the employee for the employee's telephone number and this made the employee uncomfortable. On July 3, 2022, another employee reported to their manager that Mr. Kinuani, that employee's trainer, had asked the employee for her telephone number, held

her hand when they went for a high-five, told her she was beautiful, told her he loved her, asked her to dinner, and asked her to not report Mr. Kinuani to the employer.

The employer investigated the complaints by talking with the employees who filed the complaints and other employees. The employer talked with Mr. Kinuani about the complaints on July 21. Mr. Kinuani denied saying telling an employee that he loved them, and he admitted to the other allegations. At some point, Mr. Kinuani's manager told him he could not do what he did to his co-workers. On August 12, the employer concluded that Mr. Kinuani's behavior had violated the employer's policy. The employer called Mr. Kinuani that day and terminated his employment.

Mr. Kinuani, who is an immigrant, argues that due to cultural and language barriers he did not know what he was doing was wrong. Mr. Kinuani testified that he asked employees for their telephone numbers so he could make friends and be nice to his co-workers.

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

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Kinuani from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of such the employee's contract of employment. Misconduct is limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or

wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature.<sup>1</sup>

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>2</sup> The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.<sup>3</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>4</sup>

The decision in this case rests, at least in part, on the credibility of the witness. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.<sup>5</sup> The administrative law judge may believe all, part or none of any witness's testimony.<sup>6</sup> In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience.<sup>7</sup> In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice.<sup>8</sup>

The findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considered the applicable factors listed above, and used his own common sense and experience.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. Kinuani created a hostile work environment for his co-workers. Even as he navigated cultural and language barriers, Mr. Kinuani knew that what he was doing was not acceptable as evidence by him asking one of the people who filed complaints to not report him to the employer. The employer has established disqualifying, job-related misconduct. Benefits are denied.

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<sup>1</sup> *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

<sup>2</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>3</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>4</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

<sup>5</sup> *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

<sup>6</sup> *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

**DECISION:**

The December 19, 2022 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Kinuani from employment for job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, as long as no other decision denies him UI benefits.



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Daniel Zeno  
Administrative Law Judge

January 24, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

**1. Appeal to the Employment Appeal Board** within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

**2.** If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

**1. Apelar a la Junta de Apelaciones de Empleo** dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

**2.** Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.