

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

KIMBERLY R FOULDS

Claimant,

and

JC PENNEY CORPORATION INC

Employer.

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HEARING NUMBER: 14B-UI-06074

**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

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 Employment Appeal Board would modify the administrative law judge's Findings of Fact as follows:

The Claimant began employment on November 27, 2012, working an irregular schedule averaging 31.6 hours weekly. She was originally hired as a temporary associate, and later became a full-time associate. Ms. Foulds experienced difficulty getting along with co-workers and oftentimes accused them of being 'out to get her.' (Ex. F-p.4-6) She sometimes distorted the truth by leading her co-workers to believe that video surveillance captured the alleged negative behavior towards her. (Ex. E; Ex. G-p.6-7) The Employer provided numerous coaching conversations with Ms. Foulds that involved improving her relationships with team members as well as customers. (Ex. B) The Employer also reviewed an associate's job responsibilities with her.

On January 25, 2014, the Claimant complained that she no longer wanted to work with David because he sexually harassed her. (Ex. B-p.3; C-p.1; Ex. F-p.1-3; Ex. F-p.5) The Employer's investigation determined that her accusation was unfounded (Ex. F-p.6), and issued a 'Policy Violation Warning' on April 24, 2014 re-iterating the importance of teamwork, i.e., treating customers and co-workers with respect. (Ex. D-p. 1)

On May 3rd, 7th and 8th, she complained that another male employee, Brian, assaulted her on the floor after experiencing a conflict with him over folding clothes. (Ex. C, p.1-2; Ex. G-p.3, p. 6; Claimant's Ex. 6) The Employer conducted another investigation that also included the West Des Moines police for whom the Claimant got involved. (Ex. G-p.1-8) Both investigations determined that the Claimant's accusation was, again, unfounded. (Ex. G-p.8; Ex. H) The Employer found the Claimant behaved unprofessionally, dishonestly, and abused the internal complaint procedures by lodging complaints in bad faith. On May 22nd, the Employer terminated Ms. Foulds' employment. (Claimant's Ex. 9)

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law as follows:

Due to the Claimant's track record of being disrespectful and uncooperative with several of her co-workers, together with the unfounded allegations of sexual harassment and assault, we conclude that the Claimant's testimony lacks credibility in light of the Employer's version of events.

Lastly, the Claimant submitted a request to present new and additional evidence to the Employment Appeal Board in her written argument. The new and additional evidence consisted of documents. The Claimant's request was denied because good cause was not established for why such evidence was not presented at the hearing. See 486 IAC 3.1(7).

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv