

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

MOLLY M JONES  
1835 'A' AVE NE #2  
CEDAR RAPIDS IA 52402

WALGREEN COMPANY  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10390-HT  
OC: 08/22/04 R: 03  
Claimant: Respondent (2)

**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  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Walgreen, filed an appeal from a decision dated September 20, 2004, reference 01. The decision allowed benefits to the claimant, Molly Jones. After due notice was issued a hearing was held by telephone conference call on November 9, 2004. The claimant participated on her own behalf. The employer participated by Store Manager Mike Honaker and Assistant Manager Jason Kehoe. The employer was represented by TALX UC eXpress in the person of Ruth Dolan.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Molly Jones was employed by Walgreen from March 6, 2002 until August 25, 2004. She was a full-time service clerk.

During the course of her employment Ms. Jones received three or four written warnings regarding poor attitude and inappropriate conduct. The last one was given on or about August 14, 2004. On August 18, 2004, Ms. Jones was scheduled to work the night shift temporarily while the regular night-shift clerks were on vacation. She was angry and upset about having to be on the night shift and displayed a "poor attitude" to Assistant Manager Jason Kehoe from the moment she arrived.

The claimant was given a drawer to take up to the cash register. When she arrived Mr. Kehoe was closing the register of another employee and Ms. Jones shoved him rudely out of the way in order to get to her register, rather than asking him to move. There were customers present and so the assistant manager did not say anything to her at that time. He consulted with the other assistant manager, Mick Myers. The next day the claimant was not allowed to work but was sent home and told not to report back until she received a call.

Store Manager Mike Honaker was notified the day after the incident and he reported it to the loss prevention department, which is required to investigate all incidents. An investigation was done which consisted of interviewing Mr. Kehoe and reviewing the claimant's disciplinary record. The district manager contacted Mr. Honaker and said Ms. Jones was to be discharged. She was notified of the decision on August 25, 2004, by the store manager.

Molly Jones has received unemployment benefits since filing a claim with an effective date of August 22, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

Iowa Code section 96.5-2-a provides:

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.

871 IAC 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been given several formal disciplinary actions regarding her poor attitude and inappropriate conduct. Although she maintains she did not know her job was in jeopardy, the administrative law judge does not find this assertion to be credible. The number of warnings alone should have been sufficient to put Ms. Jones on notice the employer was not satisfied with her attitude, conduct or demeanor.

The final incident consisted not only of continued poor attitude, but of inappropriate physical contact with an assistant manager. Ms. Jones pushed him in front of customers and other employees because she was not happy to have to be working the night shift. This is discourteous, unprofessional and disrespectful, and is a violation of the duties and responsibilities an employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of September 20, 2004, reference 01, is reversed. Molly Jones is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$2,170.00.

bgh/pjs