

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

RONALD CASTO
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JC PENNEY CORP INC
c/o M/S 1201
PO BOX 650486
DALLAS TX 75265-0486

Appeal Number: 06A-UI-00255-BT
OC: 11/27/05 R: 02
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ronald Casto (claimant) appealed an unemployment insurance decision dated December 29, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from JC Penney (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2006. The claimant participated in the hearing. The employer participated through Dan Waidelich, Store Manager and Department Supervisors Linda Fulton and Leann Doyle. Claimant's Exhibit A was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time sales associate from September 28, 1990 through November 12, 2005. He had previously worked in a full-time capacity. He was discharged for sexually assaulting a female co-worker on November 10, 2005. The claimant was handing the co-worker a stack of jeans and when she reached out to grab them, he stuck his hand down her shirt and under her bra. The other employee immediately reported the incident to the employer, who sent her to a different department and made arrangements for someone to cover the area in which the claimant was working. The store manager called the claimant to tell him to come to the office and the claimant immediately stated, "I know, I know, I did it, I just did it because I wanted to work alone today." The manager told the claimant to report to the office.

Upon entering the office, the claimant apologized before anything was said to him. He went on to tell the manager that he did it, but it did not matter because it was the second coming of Christ and the day of the decision was coming. The claimant said he knew the manager could not understand it but he (the claimant) could do anything he wanted to do. The manager tried to control the conversation and direct the claimant to the complaint and the claimant stated he intentionally stuck his hand down the associate's shirt because he could, since everyone was equal because of the second coming of Christ. The employer called the claimant's wife to pick him up but before she arrived, the claimant left the building and began walking down the road in the opposite direction of his residence. An ambulance was called and took the claimant to the emergency room. His wife had arrived and stated that he was not right when he woke up that morning.

The co-worker contacted the Mason City Police Department who referred the case for prosecution on a simple assault. The claimant had been told to stay away from the store but the store manager saw the claimant and his wife in the store on the following evening. The manager and a supervisor spoke to the claimant who said everything was fine. The claimant then leaned toward the store manager's ear and whispered, "Satan" before turning and leaving the store. The claimant was discharged on the following day and he subsequently pled guilty to the assault charge. He submitted a doctor's letter for the Appeal Hearing that stated he was admitted to the hospital for a "manic-depressive illness" and was "unable to control his actions due to his disability." The claimant was diagnosed with manic depression approximately 40 years earlier but contends he had no ongoing problems.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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 claimant was properly discharged for sexual assault. However, he has provided evidence that at the time of the assault, he was suffering from a mental illness that made him unable to control his actions. Consequently, the claimant cannot be held responsible under the unemployment insurance laws. An argument can be made that since the claimant pled guilty and was found guilty of an assault in a criminal court, he had to have the requisite *mens rea* and the Court would not have found him guilty if that were not present. Ideally that is correct but while he may have appeared to others to have the *mens rea* to be found guilty, his physician would be in the best position to make that determination. And based on his physician's letter, work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated December 29, 2005, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/kjf