

**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**

**MICHELLE R JACKSON
118 NW STATE ST #8
ANKENY IA 50021**

**KOHL'S DEPARTMENT STORES INC
C/o JON-JAY ASSOCIATES INC
PO BOX 182523
COLUMBUS OH 43218-2523**

**Appeal Number: 04A-UI-04043-CT
OC: 03/21/04 R: 02
Claimant: Appellant (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, 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:

Michelle Jackson filed an appeal from a representative's decision dated April 6, 2004, reference 01, which denied benefits based on her separation from Kohl's Department Stores, Inc. (Kohl's). After due notice was issued, a hearing was held by telephone on May 4, 2004. Ms. Jackson participated personally. The employer participated by Debbie Brandt, Store Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Jackson was employed by Kohl's from August 23, 2002

until March 20, 2004 as a full-time supervisor. She was discharged because of her attendance. Ms. Jackson was given a verbal warning regarding attendance on November 20, 2003 after she had been absent on 12 occasions and late on 5 occasions. She received a written warning after she was absent on December 8. On January 27, 2004, Ms. Jackson received a final written warning after she accumulated an additional 6 absences.

Ms. Jackson's last day of work was March 19. She was scheduled to be at work at 2:00 p.m. on March 20. When she did not report for work as scheduled, she was contacted at home. She was not at work because she had overslept. Ms. Jackson indicated that she would not be at work and that the supervisor could fire her if he wished. The supervisor responded by saying "ok." Ms. Jackson did not report for work or contact the employer thereafter. On March 22, a letter was sent notifying her that she had been discharged. With the exception of her absence of March 20, all of Ms. Jackson's absences had been due to illness and had been properly reported. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Jackson was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Jackson was discharged because of her attendance. She had been amply warned that her attendance was jeopardizing her continued employment with Kohl's. In spite of the warnings, she continued to accrue absences. Inasmuch as the bulk of her absences before March 20 were due to illness, they were beyond her control. However, Ms. Jackson had received a final warning on January 27, 2004 and knew that further attendance infractions might cause her to be discharged. In spite of this, she did not report for work as scheduled or contact the employer on March 20 because she overslept. She also failed to report for scheduled work after March 20. She told the supervisor that he could fire her if he wished. He responded by saying "ok," not "ok, you're fired." Inasmuch as Ms. Jackson was not told on March 20 that the employer was exercising its option to discharge her, she had an obligation to either continue reporting for work or reporting her absences. She made no inquiry concerning her status. For the reasons stated herein, the administrative law judge concludes that Ms. Jackson's absences commencing March 20 constituted a substantial disregard of the employer's standards. Accordingly, benefits are denied.

DECISION:

The representative's decision dated April 6, 2004, reference 01, is hereby affirmed. Ms. Jackson was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b