

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

CHESSICA M SANCHEZ  
3000 CARTER RD  
DUBUQUE IA 52001

JC PENNEY CORPORATION  
c/o M/S 1201  
PO BOX 650486  
DALLAS TX 75265-0486

Appeal Number: 04A-UI-03100-AT  
OC: 02-15-04 R: 04  
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

STATEMENT OF THE CASE:

JC Penney Corporation, Inc. filed a timely appeal from an unemployment insurance decision dated March 10, 2004, reference 01, which allowed benefits to Chessica M. Sanchez. After due notice was issued, a telephone hearing was held April 8, 2004. Ms. Sanchez did not respond to the hearing notice. Management Associate Keith Miller and Senior Customer Service Representative Renee Fendell participated for the employer.

#### 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: Chessica M. Sanchez was employed as a sales associate by JC Penney Corporation from November 3, 2003 until she was discharged February 19, 2004. During orientation Ms. Sanchez was given a copy of the employee discount policy, instructions on how and when it was to be used and the policy that misuse of the employee discount card would result in discharge. Approximately three weeks before discharge the company discovered an instance in which it appeared that Ms. Sanchez had misused the employee discount card. Further investigation during the next few weeks resulted in a total of six instances in which people not entitled to receive an employee discount received one from Ms. Sanchez. Company computer software enables the company to track transactions by employee. Ms. Sanchez had no explanation but denied using the employee discount inappropriately.

Ms. Sanchez has not requested any unemployment insurance benefits since filing her claim effective February 15, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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 evidence before this administrative law judge establishes that Ms. Sanchez was trained in the appropriate use of the employee discount card and was advised of the consequences of its misuse. The evidence establishes six inappropriate transactions and that Ms. Sanchez offered no explanation, just a bare denial, when confronted. Her failure to participate in the contested case proceeding means that the employer's testimony is uncontroverted. The evidence before the administrative law judge is sufficient to establish misconduct. Benefits are withheld. There has been no overpayment because Ms. Sanchez has received no benefits.

DECISION:

The unemployment insurance decision dated March 10, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

b/kjf