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

SARAH A JONES
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CARE INITIATIVES
C/O TALX UC EXPRESS
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 06A-UI-04123-CT
OC: 03/12/06 R: 03
Claimant: Respondent (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:

Care Initiatives filed an appeal from a representative's decision dated April 7, 2006, reference 02, which held that no disqualification would be imposed regarding Sarah Jones' separation from employment. After due notice was issued, a hearing was held by telephone on May 2, 2006. Ms. Jones participated personally. The employer participated by Alan Blakested, Administrator, and Larry Westendorf, Environmental Services Supervisor. The employer was represented by Lynn Corbeil of TALX UC eXpress. Exhibits One through Eight were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Jones was employed by Care Initiatives, doing business as Parkview Nursing and Rehab, from March 30, 1998 until March 10, 2006. She was employed full time as an environmental aide. Her discharge from the employment was prompted by complaints from two coworkers.

On March 8, 2006, another employee, Senja, announced that she was quitting because Ms. Jones was mean to her. She was upset and crying at the time. Apparently there had been an issue concerning her hours. Senja no longer wanted to work the evening hours of her split shift and, therefore, her evening hours were being distributed to other employees. Ms. Jones told Senja that she could not have a full schedule since she was not willing to work the evening hours. This is apparently what caused Senja to say Ms. Jones was being mean to her. She did not give the employer any further particulars other than to say that Ms. Jones looked at her "cross." In her written statement to the employer, Senja stated that Ms. Jones used to talked about her when they were on break. The specifics of what was said are unknown. She also stated that Ms. Jones looked at her as if she wanted to start a fight. Senja also indicated in her written statement that "they" were talking about her one day in the dining room. Senja left on March 8 but later returned to the employment and was given full-time day hours.

The employer also received a written complaint from Lori Owens on March 9. She indicated that she began having problems with Ms. Jones on March 7. They were in the break room and Ms. Jones was getting food from a vending machine. Ms. Owens jokingly told another employee that she was sitting in Ms. Jones' chair. Ms. Jones turned from the vending machine and indicated she had heard her name. She also said, "Lori, you said that's Sarah's chair." Although Ms. Owens indicated in her statement that Ms. Jones turned the episode into something major, she does not indicate in what way she did so. In her statement, Ms. Owens cited the fact that her list of residents rooms was missing from her cart and then reappeared. She assumed Ms. Jones had removed and replaced it but does not state a factual basis for her assumptions. Finally, Ms. Owens related a comment in which Ms. Jones stated that another employee worked hard and should get some credit for it. The comment was made after the coworker had gone outside for lunch with Ms. Owens. Ms. Jones asked her why she went outside when she usually eats inside. Ms. Owens felt Ms. Jones made the comment for the purpose of making her feel bad.

Ms. Jones was written up and suspended for three days as a result of an incident on October 11, 2005. She was cleaning the dining room floor when kitchen aides entered and began cleaning tables. They were brushing items from the tables onto the floor. Ms. Jones yelled at them to stop. She asked them where the bucket was that was to be used for clearing debris from tables. There were some words exchanged between Ms. Jones and one of the aides. She had also received a written warning on January 8, 2004 because she referred to a subordinate as "illiterate" and was yelling at him about his job performance. She received a written warning on April 1, 2003 because she was spraying air freshener behind a coworker.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Jones 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v.

Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. The decision to discharge was based on complaints from two coworkers, neither of whom were offered as witnesses during the hearing. The fact that Senja was crying and stated that Ms. Jones was mean to her does not establish that Ms. Jones did or said anything inappropriate. Although the employer presented a written statement from Senja, the statement does not address what specifically happened on March 8. None of the allegations contained in Senja's statement are sufficiently specific to enable the administrative law judge to conclude that Ms. Jones was mean or otherwise inappropriate with her.

The employer also presented a written statement from Ms. Owens. Her statements regarding what occurred in the break room on or about March 7 does not establish any acts of misconduct. She contended that Ms. Jones turned the incident into a major episode but does not elaborate as to what she did to escalate the matter. Her allegations regarding her list of residents' rooms that disappeared and then reappeared does not contain any facts that would support a conclusion that Ms. Jones was responsible. Although Ms. Jones made a statement that another employee was a good worker and deserved credit for it, the administrative law judge cannot understand how Ms. Owens took this as an effort to make her, Ms. Owens, feel bad. On the whole, Ms. Owens' statement does not establish any acts of misconduct on Ms. Jones' part.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish that Ms. Jones' discharge was triggered by conduct that constituted misconduct within the meaning of the law. The next most previous incident was in October when she was disciplined after a verbal altercation with coworkers in the dining room. However, conduct that occurred in October would not constitute a current act in relation to a discharge that occurred in March. For the above reasons, the administrative law judge concludes that a current act of misconduct has not been established as required by 871 IAC 24.32(8). Accordingly, no disqualification is imposed.

DECISION:

The representative's decision dated April 7, 2006, reference 02, is hereby affirmed. Ms. Jones was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs