

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

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

Appeal Number: 04A-UI-03303-ET
OC: 02-22-04 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/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 17, 2004, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 14, 2004. The claimant participated in the hearing. Ellen Blocker, Office Associate, and Dan McElwain, Store Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time sales associate in the furniture department for

J.C. Penney Corporation from November 12, 2002 to February 13, 2004. Two customers called the employer and stated they had charges on their J.C. Penney credit cards for items they did not purchase, although they had previously bought items from the employer with the claimant acting as their salesperson. The employer investigated and determined the sales in question were made by the claimant to one person using two different credit cards. The claimant acknowledges she made the sales but testified most of the furniture sales, including these, were made by phone, and she asked the customer for her name, phone number, address, and account number. The claimant remembered the transactions because she had difficulty entering them in the computer and the orders were cancelled at the direction of the warehouse because the lot numbers for the merchandise were unreadable or incorrect, as the items were special orders rather than floor models. After learning the order was cancelled the claimant reordered but at least one of the reorders was cancelled as well. The employer terminated the claimant's employment because she could not explain the situation to its satisfaction and because she took orders over the phone, in violation of the employer's policy, and received commission on the three sales. The claimant denies that she received commissions on the cancelled orders.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the employer maintains the claimant made "bogus" charges to two customer's credit cards, received commissions on the orders in question, and violated policy by taking orders over the phone, the claimant denies that she knew the orders were made by someone other than the cardholder, that she received a commission on those sales, or that taking orders by phone was not an accepted practice. The employer did not provide evidence establishing the claimant actually received commissions on the orders in question. Although taking orders by phone may have been a violation of the employer's policy, the claimant's testimony that the majority of furniture department sales were made over the phone after customers comparison shopped was not refuted by someone more familiar with the furniture department. Additionally, the employer has not demonstrated a connection between the claimant and the customer making the purchases. Consequently, while the administrative law judge is not completely convinced the claimant was not involved in orchestrating the transactions, the employer has not provided enough evidence to conclude she intentionally allowed a customer to charge furniture to the accounts of two other customers. Therefore, benefits must be allowed.

DECISION:

The March 17, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/b