

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JAMES H ELLIOTT
Claimant

APPEAL NO. 12A-UI-06780-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J C PENNEY CORPORATION INC
JC PENNEY
Employer

OC: 05/06/12
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 25, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 2, 2012. Claimant James Elliott participated personally and was represented by attorney, Heather Carlson. District Manager Scott Hansen represented the employer. Exhibits One and A through D were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Elliott was employed by JC Penney from 1967 and was the Davenport Store Manager for 23 years until May 9, 2012, when Kellie Harris, Regional Human Resources Director, discharged him from the employment. District Manager Scott Hansen carried out the suspension and discharge.

The employer has recently undergone labor force restructuring. As part of that restructuring, the employer ended many employees' wage-plus-commission compensation and moved those employees into hourly-wage-only compensation. The employer's plan was to make a company-wide announcement of this change in compensation at a designated time on Monday, May 7, 2012. The employer has provided store managers, including Mr. Elliott, with written material that clearly indicated that managers were not to break the designated timeline.

District Manager Scott Hansen had recently been reassigned to the region that included the Davenport store. Mr. Hansen became Mr. Elliott's immediate supervisor at that time. On Thursday, May 3, Mr. Elliott contacted Mr. Hansen about the impending change in compensation. Mr. Elliott asked Mr. Hansen whether he could implement the change on Friday, May 4, instead of waiting until Monday. Mr. Hansen did not provide a response.

In the absence of an answer, Mr. Elliott equated lack of an answer with tacit approval to move forward with announcing the change in compensation. Mr. Elliott's store was scheduled to conduct inventory on Monday, May 7. Mr. Elliott did not want to make the announcement concerning the compensation change during inventory. Mr. Elliott also was privy to rumors that had started to spread and wanted to put the rumors to rest. Mr. Elliott was aware that at least one other store manager was contemplating an early announcement of the change in compensation structure.

On Friday, May 4, Mr. Elliott gathered the staff who were present and announced the planned change in compensation. Later that day, employees in the Davenport custom decorating/window department participated in a regional conference call. The underlying purpose of the conference call was to make certain that the custom decorating/window employees were present in the store on the next Monday for the planned announcement of the change in their compensation. The employees from Mr. Elliott's store who were participating in the conference call did not know they were not yet supposed to know about the planned change in compensation and mentioned the planned change in compensation to others on the call who had not yet been advised of the planned change. This created a ripple effect that disrupted the employer's plan to make the announcement to affected staff on the following Monday morning.

On that Monday, Mr. Hansen went to the Davenport store to speak with Mr. Elliott about the matter and confirm that he had in fact announced the change ahead of schedule. Mr. Hansen first spoke to some store employees to confirm what had been discussed the previous Friday. Mr. Hansen then spoke with Mr. Elliott. Mr. Elliott confirmed that he had made the announcement on Friday. Mr. Elliott said that he had been motivated to do so by the time conflict with the inventory scheduled that same Monday. Mr. Elliott acknowledged that he had "screwed up."

On May 8, Mr. Hansen notified Mr. Elliott that he was suspended from the employment pending an investigation into the early disclosure of the planned change in compensation. On Wednesday, May 9, Mr. Hansen met with Mr. Elliott and notified him that he was discharged from the employment.

Mr. Elliott had executed a written Universal Acknowledgement on April 21, 2008. That document included Mr. Elliott's acknowledgement of the policy concerning Confidentiality of Company Information and Records and his acknowledgement of receipt of The Associate Guide to WINNING TOGETHER. The Associate Acknowledgement of Confidentiality of Company Information and Records, began as follows:

To maintain the confidentiality of Company records, proprietary information and materials, the following guidelines apply to Associates who receive, develop or maintain any proprietary files, including customer and/or Associate files during their employment relationship with the Company.

Use of Company Information

All non-public information and records concerning any aspect of the Company's business or acquired by Associates as a result of their employment by the Company are confidential. Unauthorized use or disclosure of such information or records violates Company policy and may also violate the law.

[Emphasis added.]

Subsection 2 of Section II, Associate Acknowledgement of Confidentiality of Company Information and Records, began as follows:

2. Disclosure of Company Information

An associate may not disclose non-public Company information, including information about our internal operations, customers, suppliers, or Associates, to others without appropriate authorization.

Examples of Disclosure of Company Information

Example A

Situation: An Associate becomes aware of planned organizational changes within the Company before they are announced. He reveals the changes on an Internet bulletin board.

Analysis: This use of Company information violates the Statement of Business Ethics.

[Emphasis added.]

The employer's Associate Handbook contained a section titled, HOW WE WORK TOGETHER. The section contained a subsection with the heading, Respecting and Following the Integrity Guidelines. That subsection began as follows:

In line with our WINNING TOGETHER Principles and the "Golden Rule," we expect Associates to act only with the highest integrity and ethical standards. We should treat each other, our Customers, vendors and others that we come into contact with at work, with dignity and respect. It is important that you become aware of the Company's rules of behavior and the Statement of Business Ethics. To maintain our integrity standards, we won't tolerate conduct that is immoral, illegal or unethical.

It is impossible for the Company to anticipate every form of misconduct that might call for discipline or immediate dismissal. The following list gives some examples of unacceptable conduct. Although JC Penney reserves the right to decide what discipline is appropriate, misconduct of the following nature generally results in immediate termination of employment.

Included amongst the bullet points that followed the above text was, "Engaging in unethical conduct that violates the Statement of Business Ethics."

Mr. Elliott had no prior reprimands.

While the employer was in the process of reducing the number of managerial employees at the time of Mr. Elliott's discharge, the employer had not plan to end Mr. Elliott's employment prior to his premature announcement of the change in compensation.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence establishes that Mr. Elliott knew, as a career JC Penney store manager, that certain information within the company was confidential in nature and not to be disclosed to others without authorization. Mr. Elliott knew that certain time-sensitive information within the company was to remain confidential until the designated time for disclosure. Mr. Elliott knew that silence from a supervisor is not the same as tacit approval. Mr. Elliott would have been well aware of how easily the company's business could be disrupted by a premature announcement of a substantial change in company policy and practice, especially one that dealt with a far-reaching change in compensation. Mr. Elliott tipped the company's

hand before the appointed moment. A person in Mr. Elliott's position would know such conduct could or would be disruptive to the employer's enterprise.

While accurate and efficient taking of inventory was important, Mr. Elliott's concern about the inventory does not fully excuse, mitigate, or even adequately explain why Mr. Elliott knowingly and intentionally violated a company-wide directive not to disclose the planned change in pay structure before the appointment time. A person in Mr. Elliott's position would know that successful structural transition hinged in part on *how* policy changes were announced and *how* they were received by those affected by them.

Mr. Elliott's conduct does indicate some level of disregard of the employer's agenda and substitution of Mr. Elliott's own agenda. Both were intended to serve the employer's interests. The evidence establishes a single instance in which Mr. Elliott failed to follow a reasonable directive. The evidence does not establish a *wanton* disregard of the employer's interests. Though the decision to end the employment was within the employer's discretion, the administrative law judge concludes that Mr. Elliott was not discharged for misconduct in connection with the employment that would disqualify him for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Elliott was discharged for no disqualifying reason. Accordingly, Mr. Elliott is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Elliott.

DECISION:

The Agency representative's May 25, 2012, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css