

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA W OPPERMAN
Claimant

APPEAL NO: 11A-UI-06216-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 04/10/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joshua W. Opperman (claimant) appealed a representative's April 29, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Target Corporation (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 29, 2011. The claimant participated in the hearing. Amy Mosely appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 12, 2009. He worked full-time as warehouse worker at the employer's Cedar Falls, Iowa, distribution center. His last day of work was April 8, 2011. The employer discharged him on that date. The stated reason for the discharge was accumulating too many corrective actions under the employer's progressive discipline policy.

The employer's policy provides that discharge will occur if an employee reaches four corrective actions. The claimant had been given his first progressive discipline step on December 30, 2009 for failing to call in an absence because he had misread the overtime schedule and did not realize he was scheduled. He received his second corrective action on July 13, 2010 for an unsatisfactory job performance issue. On October 1 he was given his final warning for an unsafe act in lowering the order picker in such a manner as to cause damage to a pallet.

On April 7 the claimant drove an order picker through a cross walk in the warehouse without slowing down or honking his horn, both as required by the employer's safety policies. There were some employees in the area that were at risk for injury. As a result of this additional

unsafe act, the employer gave the claimant his fourth corrective action. Because it was his fourth corrective action, the employer discharged the claimant on April 8.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's additional unsafe act after having been given a final warning for having three corrective actions, notably including one other unsafe act, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 29, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 8, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is then otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw