

**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**

**KITRA D TERRY
3014 W 67TH ST
DAVENPORT IA 52806-1536**

**TARGET CORPORATION
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-07498-CT
OC: 06/18/06 R: 04
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:

Target Corporation filed an appeal from a representative's decision dated July 12, 2006, reference 01, which held that no disqualification would be imposed regarding Kitra Terry's separation from employment. After due notice was issued, a hearing was held by telephone on August 14, 2006. Ms. Terry participated personally. The employer participated by Jill Enyart, Executive Team Lead/Human Resources, and Julie Dopson, Executive Team Lead/Logistics.

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. Terry was employed by Target from July 9, 1996

until March 24, 2006. She was last employed full time as senior team lead in logistics. Her discharge from the employment was prompted by an incident that occurred on March 17, 2006. Ms. Terry approached another associate, Lea, about the fact that she was not wearing her name badge. When Lea placed her hands to her face, Ms. Terry said "don't wave me off" and walked away. Lea did not believe she was waving her off and, therefore, complained to management.

On March 15, 2006, an associate complained about Ms. Terry to management. The associate left the back stock areas to get more work and was told by Ms. Terry that she would bring work to him. When she had not brought him any work, the associate returned to get more on his own. Ms. Terry's response was, "I told you to stay down there."

Ms. Terry received a written warning on June 27, 2005 that addressed various issues dating back to December of 2004. There was a complaint that she refused to allow an associate to leave for a funeral in December of 2004. In January of 2005, some team members said they did not want to work with her. It was reported that Ms. Terry was visibly upset while unloading a trailer in March of 2005. On June 19, 2005, she told an associate that she was disrespectful because of her conduct during a meeting in which Ms. Terry was speaking. She did not address the issue with the associate during the meeting but after it was over. On June 24, 2005, she refused to hold an item for a customer. Ms. Terry believed she had the discretion to make the refusal.

In October of 2005, the employer spoke with Ms. Terry concerning an associate's scheduling request. The associate indicated she could not work on a certain date and was told by Ms. Terry to change her availability and she would cover the shift for her. However, Ms. Terry failed to do so. When the date she wanted off came nearer, the associate was told she would have to find her own replacement for the shift, as Ms. Terry had neglected to cover it for her. On November 17, 2005, the employer met with Ms. Terry concerning complaints that she "blew up" at associates while they were unloading a truck. She apparently yelled at associates because certain items were not pulled.

On November 23, 2005, Ms. Terry received a final written warning. She had failed to have long-arm bars installed timely. She failed to respond immediately to an associate's request for help. She was performing other duties that were required of her before she could leave. The employer felt she should have assisted the associate first and then performed the other duties. There was also an allegation that she threw a walkie-talkie on the table when one was requested by an associate. Ms. Terry acknowledged that she did toss the walkie-talkie on the table. The November 23 warning also addressed what the employer felt was a false complaint. She reported to her supervisor that she felt there were conflicts between two associates. Her report was based on her interpretation of conversations with one of the associates. When the supervisor questioned the associate, she denied having raised the issue with Ms. Terry.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Terry 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). With the exception of the failure to have long-arm bars installed timely and the refusal hold an item for a customer, all of the matters that caused Ms. Terry's discharge concerned her interactions with other associates.

On one occasion, she tossed a walkie-talkie on the table. On another occasion, she failed to cover a shift for an associate as she indicated she would. Although Ms. Terry did tell an associate she felt her conduct during a meeting was disrespectful, she did not admonish the associate in front of her peers so as to cause her embarrassment. Ms. Terry did not immediately respond to an associate's request for assistance because of a good-faith belief that the other duties she was performing at the time had to be done first.

Ms. Terry did tell the associate on March 17 not to wave her off. When the associate placed her hands to her face, Ms. Terry believed she was waving her off. Although this was not the associate's intent, it appeared otherwise to Ms. Terry. Her request that the associate remain in the back stock area and that she would bring him work was not unreasonable. The employer's evidence established that Ms. Terry was an unsatisfactory employee. It did not establish a wanton and willful disregard of the employer's interests or standards. Inasmuch as the evidence failed to establish substantial misconduct, benefits are allowed. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983).

DECISION:

The representative's decision dated July 12, 2006, reference 01, is hereby affirmed. Ms. Terry was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjw