

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ETHAN M ROBERTS
Claimant

TARGET CORPORATION
Employer

APPEAL NO. 20A-UI-11883-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 18, 2020, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on June 7, 2020 for violation of a known company rule. After due notice was issued, a hearing was held on November 19, 2020. Claimant Ethan Roberts participated. Delaine Dahl represented the employer and presented additional testimony through Chalsey Neva.

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: The claimant was employed as a part-time "Advocate" (retail clerk) from 2018 until June 7, 2020, when the employer discharged his alleged violation of the zero tolerance violence-free workplace policy. The policy was set forth in the handbook the employer provided to the claimant at the start of his employment. On June 4, 2020, the claimant was trying to get the attention of a coworker. The claimant was pushing a shopping cart at the time and intended to lightly tap the coworker. There was no animosity between the claimant and the coworker. The claimant meant no harm to the coworker. The claimant and the coworker both brushed off the incident at the time. On June 6, 2020, the coworker alleged to a member of management that she had bruises on her thighs where the claimant had pushed the cart into her. The employer reviewed the surveillance record of the incident. On June 7, 2020, the employer interviewed the claimant. The claimant conceded that he pushed the cart into the coworker and that he had been joking at the time. The employer notified the claimant that he was discharged for violating the zero tolerance violence-free workplace policy. The employer retains the video surveillance record of the incident, but knowingly and intentionally elected not to produce it for the appeal hearing. There was no other basis for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code Rule 871-24.32(4).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record fails to establish a discharge based on misconduct in connection with the employment. The evidence establishes that the claimant made an error in judgment when he tried to get the coworker's attention by tapping the coworker with the cart. The claimant meant no harm and his action did not constitute a physical altercation or violent act. The evidence establishes an isolated incident of mild horseplay that led to an unintended outcome. It is noteworthy that the coworker told the employer she brushed off the incident at the time, which reinforces the conclusion that no harm was intended and the claimant's action was not a violent act. The employer elected not to present testimony from the coworker involved in the incident and failed to substantiate the allegation that the claimant's action led to bruising. The employer elected not to produce the most important piece of evidence, the surveillance record that documented the incident. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The September 18, 2020, reference 01, decision is reversed. The claimant was discharged on June 7, 2020 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

December 1, 2020
Decision Dated and Mailed

jet/scn