

**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**

**TAMMI L ROBSON
1730 EASTON AVE
WATERLOO IA 50702**

**TARGET CORPORATION
1000 NICOLLET MALL TPN130
MINNEAPOLIS MN 55404**

**Appeal Number: 05A-UI-07905-DWT
OC: 07/03/05 R: 03
Claimant: Appellant (5)**

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

STATEMENT OF THE CASE:

Tammi L. Robson (claimant) appealed a representative's July 22, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Target Corporation (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2005. The claimant participated in the hearing. The claimant's potential witnesses were not available for the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 17, 2005. The claimant worked full time loading freight that would be delivered to other locations. The claimant's supervisors were John and Curtis.

On June 19, 2005, the claimant went to Iowa City to pick up a friend whose car broke down. While the claimant was in Iowa City, her car broke down. The claimant did not have a way to get back home on June 19 or 20. The claimant did not have in her possession the employer's call-in number to notify the employer she was unable to work these days.

The claimant returned home on June 21. The claimant did not contact the employer when she got home. The claimant, however, made arrangements to have a friend fix her vehicle. The claimant's vehicle was working again on June 23.

After June 20, the claimant was next scheduled to work on June 25. On June 24, the claimant called and left a message for John. The claimant indicated in her message that her car had broken down and she had been stranded in Iowa City. The claimant asked him to call her and let her know if she still had a job. The claimant told John she would do anything to keep her job. When John did not return the claimant's call, she did not call the employer again before she was scheduled to work on June 25 and did not report to work on June 25.

On June 26, 2005, the claimant called the employer's human resource department to find out the status of her employment. The human resource representative that the claimant talked to indicated that she did not personally handle these matters but the claimant may receive a letter informing her about the status of her continued employment. The week of June 27, the claimant received a letter from the employer indicating she no longer worked for the employer because the employer concluded she had quit when she had three consecutive scheduled days that she did not report to work or notify the employer she would not be at work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts do not establish the claimant intended to quit her employment. Instead, the employer initiated the employment separation and discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant's failure to contact the employer when she returned home on June 21 may not by itself amount to work-connected misconduct, but in conjunction with failing to call the employer again on June 25 or report to work on June 25 shows an intentional and substantial disregard of the employer's interests. The claimant left a message for John on June 24 that she would do anything to keep her job. However, the claimant failed to report to work on June 25. The claimant's excuse for not reporting to work was because she assumed she no longer had a job when John did not call her. However, the claimant did not even know if John was at work to hear her message or return her call. The claimant's failure to report to work on June 25 in conjunction with her failure to call the employer on June 19, 20 or when she returned home on June 21 amounts to work-connected misconduct. As of July 3, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 22, 2005 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 3, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/tjc