

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN D MCCORMICK
Claimant

APPEAL NO: 13A-UI-13684-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 11/17/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brian D. McCormick (claimant) appealed a representative's December 9, 2013 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 January 8, 2014. The claimant participated in the hearing. Stephanie Staack appeared on the employer's behalf and presented testimony from one other witness, Lonnie Luttinen. 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 October 11, 2011. He worked full time as an outbound warehouse worker at the employer's Cedar Falls, Iowa food distribution center. He worked on a second shift from Sunday through Thursday. His last day of work was November 20, 2013. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

In the last 12 months of the claimant's employment he had 14 attendance occurrences totaling 136.07 hours. Of those occurrences, five were due to full absences due to illness and three were due to partial absences due to illness. These occurrences did not include a leave of absence from about August 8 through the end of September. The claimant had been given a written final warning for attendance on November 4, 2012; his occurrences had not sufficiently dropped since that point to trigger any additional written final warning. However, on October 30, 2013 the claimant's group leader, Luttinen, gave the claimant an additional verbal coaching; this coaching was the result of an absence on October 29 where the claimant had put in to take the shift off as vacation, but only had six hours of vacation time left, insufficient time to cover the shift.

The claimant had much earlier put in to take four days of vacation from November 10 through November 14. Particularly after being given the additional verbal coaching on October 30 the claimant realized that he did not have vacation time to cover these days, and prior to November 10 had already advised the employer that he would be working on November 12, November 13, and November 14. However, he still took off November 10 and November 11 for personal time even though he did not have any vacation pay to cover the days of absence. These days of absence were treated as an additional occurrence, which then resulted in the employer's decision to discharge the claimant.

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 which 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 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. 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).

Excessive unexcused absenteeism can constitute misconduct; however, to be misconduct. 871 IAC 24.32(7). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had prior excessive unexcused occurrences, and previously been warned that future occurrences could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's December 9, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 20, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs