

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GINGER TAYLOR
Claimant

APPEAL NO: 08A-UI-01500-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 01-06-08 R: 12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 30, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 27, 2008. The claimant participated in the hearing. Leanne O'Clair, Executive Team Lead Logistics and Gayla Stronquist, Senior Team Lead for Flow, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time reverse logistics specialist for Target Corporation from August 7, 2006 to December 19, 2007. She was discharged for policy violations. The claimant was responsible for making sure the back service door was locked except when the store was receiving deliveries because it was a safety issue. She was required to have the lead on duty lock the door behind her when she left following her scheduled shift. On October 2, 2007, the door was left unlocked. The claimant was in charge and so was responsible to make sure the door was locked when she left. As a result of this incident the claimant received a verbal warning October 5, 2007. On October 9, 2007, the door was left unlocked all day and the claimant received another verbal warning October 19, 2007. On October 23, 2007, the leader on duty found the door unlocked. The employer held a meeting and issued the claimant a final written warning November 2, 2007, and she was told if it happened again during the next six months she would face termination because of the safety issue. On December 6, 2007, the claimant was closing before the end of her shift at noon. She called the lead on duty to lock the door 20 minutes before the end of her shift because she had to leave by noon so she did not run over her allowed hours and was told the lead on duty was on a register and would be back as soon as possible. When the lead on duty did not come the claimant went to find her and was told to go ahead and clock out because she was headed back there to lock the door so the claimant clocked out and did some shopping. She saw the lead on duty and was told she let

someone else in with a delivery, indicating the door was locked. The employer terminated the claimant's employment December 20, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant may have been responsible for leaving the door unlocked October 2, 9 and 23, 2007, the employer waited nine days before issuing the warning for the October 9, 2007, incident and 10 days before issuing the warning for the October 23, 2007. Additionally, the termination occurred 14 days after the final incident December 6, 2007. If the claimant's violations were such a safety issue it would seem the employer would have warned her much sooner on each occasion and issued a written warning instead of a second verbal warning before jumping to a final

written warning. The claimant's testimony regarding the situation December 6, 2007, was credible and it appears she did everything in her power to get the lead on duty to lock the door before she had to leave at noon to avoid overtime hours. Consequently, the administrative law judge concludes the claimant's actions were not current acts of misconduct and do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 30, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs