IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TIMOTHY B MAHONE
Claimant

TARGET CORPORATION
Employer

APPEAL NO. 17A-UI-09256-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/06/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Timothy Mahone (claimant) appealed a representative's August 31, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Target (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 4, 2017. The claimant participated personally. The employer participated by Stephanie Staack, Human Resources Business Partner, and Luke Schoonover, Warehousing Operations Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 12, 2016, as a full-time warehouse worker. The claimant signed for receipt of the employer's handbook on January 12, 2016.

On March 29, 2017, the employer issued the claimant a written warning for unsatisfactory work performance from October 23, 2016, to March 28, 2017. The warning addressed the claimant's reliability or attendance. The claimant was absent due to his infant's illness or snow once and he was tardy for work twice. He clocked in for work one minute early once. The claimant turned in his leave requested before 8:00 a.m. on Monday after the human resources person gave him extra time to submit the form. The employer said other radio carriers did not know he was in the bathroom three times. When he received the warning the claimant discovered who he was to notify, when he went to the bathroom on first shift. The claimant started working first shift in January 2017.

The warning addressed the claimant's quality of work. The claimant admitted he placed bands on the hooks of his carts and put apple boxes at the base of the pallet. He learned the placement of the apple boxes from second shift. It discussed the claimant's teamwork. When

the employer told the claimant he was getting off work early he said, “We’re getting off fifteen minutes early. What am I going to do?” The employer deemed the comment inappropriate.

Lastly, the warning spoke of the claimant’s knowledge of the job. The employer allowed employees to drink water on the warehouse floor. The claimant used a rinsed out Mountain Dew bottle for water. The employer did not believe the liquid was water. The employer thought the claimant left damaged items, did not clear loads and did not pull split trays. These types of items were all over the warehouse and not the result of the claimant’s actions. The employer notified the claimant that further infractions could result in termination from employment.

On June 25, 2017, the employer issued the claimant a written warning for unsatisfactory work performance from May 1, to June 22, 2017. With regard to the claimant’s attendance the employer wrote about several times of talking to the claimant about leaving his work center and being tardy for his shift. Actually, the claimant was tardy once. On June 21, 2017, his infant daughter was not breathing and he was late for work. No incidents of the claimant leaving his work area occurred.

This warning also addressed the claimant’s quality of work. The employer moved the claimant into Zone Five. The claimant did not understand how to make his pallets stable and properly affix labels. He asked for retraining. With regard to teamwork, the employer thought the claimant should have known the differences in cleanup procedures between second shift and first shift. He did not until the employer told him. An executive of the company engaged the claimant in a conversation. The executive was able to travel with his job and see different sites. The claimant made the comment, “I would like to switch jobs with you.” The employer thought the comment was inappropriate. The employer notified the claimant that further infractions could result in termination from employment.

At some point the employer decided employees should wear safety glasses in the warehouse or in the freezer area. The rule for safety glasses may be posted but the verbiage is unknown. There was training on safety glasses on an unknown date. There is no written rule regarding safety glasses in the handbook. On August 7, 2017, the claimant was working in the freezer area of the warehouse. He was wearing his safety glasses on his head but they were tipped up so he could see. The lenses were fogged from condensation. On August 8, 2017, the employer terminated the claimant for not wearing his safety glasses.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). In this case, the employer could not cite the rule about wearing safety glasses, where the rule was written, or when the rule was imparted to the claimant. If there is no rule, then there cannot be a consequence for breaking the unknown rule. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 31, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs