

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IVONA BAJOREK
Claimant

APPEAL 17A-UI-10402-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 09/10/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 9, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 30, 2017. Claimant participated. Employer participated through executive team leader/human resources Amanda O'Brien. Executive team leader/guest experience Alex Hanna and asset protection team leader Kendall Davis appeared on behalf of the employer. The employer offered Employer Exhibit 1 into evidence. Claimant objected to Employer Exhibit 1 because she was discriminated against. Claimant's objection was overruled and Employer Exhibit 1 was admitted into evidence. The employer offered Employer Exhibit 2 into evidence. Claimant objected to Employer Exhibit 2 because she did not receive a copy of Employer Exhibit 2. Claimant's objection was sustained and Employer Exhibit 2 was not admitted into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a cashier/team member from July 9, 2001, and was separated from employment on August 28, 2017, when she was discharged.

The employer has a written policy that prohibits employees from taking items, such as a promotional gift card, that should have been issued to a customer/guest. The policy provides that employees will be discharged for a violation of this policy. The employer also has a written policy that provides if a customer does not want a promotional gift card, then the employee is to turn it into the lost and found. Claimant was aware of the employer's policies. Employer Exhibit 1. The employer also has a policy that prohibits employees from receiving gifts or tips from customers.

On August 16, 2017, during claimant's scheduled shift, she kept a promotional gift card (value \$5.00) that should have been provided to the customer she was helping. When the customer was checking out, the customer made a qualifying purchase and should have received the \$5.00 promotional gift card. As claimant was ringing up the customer's purchases, claimant was notified that the customer was to receive the promotional gift card. Claimant placed the promotional gift card on the counter, but the customer did not take the promotional gift card. Employer Exhibit 1. The customer had a lot of purchases and claimant was still ringing up the customer's transactions when she placed the promotional gift card on the counter. The promotional gift card was on the counter for a short period of time (less than a minute) when claimant picked it up off the counter and put it in her pocket without giving it to the customer. Employer Exhibit 1. Claimant then finished ringing up the items the customer was purchasing. Employer Exhibit 1. The customer then paid for the items and left without the promotional gift card.

On August 18, 2017, claimant used the promotional gift card, in conjunction with her team member discount card, when she made a purchase at the employer. Employer Exhibit 1. On August 21, 2017, the investigation center notified Ms. O'Brien and the asset protection team that there was a potential violation of the promotional gift card. Mr. Davis then started an investigation. Employer Exhibit 1. Mr. Davis was able to review the surveillance video from August 16, 2017. Employer Exhibit 1. Mr. Davis observed claimant put the promotional gift card on the counter, look around, retrieve the promotional gift card, and put the promotional gift card in her pocket, in violation of the employer's policies. Employer Exhibit 1. On August 24, 2017, Mr. Davis turned over his findings from the investigation to Ms. O'Brien. Ms. O'Brien then watched the surveillance video from August 16, 2017. Ms. O'Brien observed claimant put the promotional gift card on the counter, look around, retrieve the promotional gift card, and put the promotional gift card in her pocket.

On August 25, 2017, Ms. O'Brien and Ms. Hanna met with claimant regarding what happened on August 16, 2017 and August 18, 2017. Ms. O'Brien asked claimant if she knew what a promotional gift card was and Ms. O'Brien showed her a promotional gift card. Claimant told Ms. O'Brien she was familiar with promotional gift cards. Ms. O'Brien asked claimant how promotional gift cards are issued. Claimant explained that promotional gift cards pop up on the screen. Ms. O'Brien asked claimant who is supposed to receive the promotional gift cards. Claimant responded that customers are supposed to receive the promotional gift cards. Ms. O'Brien asked claimant what happens if a customer forgets their promotion gift card. Claimant initially responded that a customer would not forget a promotional gift card because it is money, but said if it did happen she would turn it into guest services. Ms. O'Brien told claimant that was the correct process. Ms. O'Brien asked claimant if she knew what the consequences were if a team member did not turn a promotional gift card into guest services. Claimant responded the team member would be fired. Claimant told Ms. O'Brien that she was aware of a team member that was fired for not turning in a \$5.00 promotional gift card. Ms. O'Brien asked claimant if she ever forgot to turn in a promotional gift card to guest services and claimant responded no. Ms. O'Brien asked the question again and claimant again responded no. Ms. O'Brien asked claimant if she forgot to turn in a promotional gift card on August 16, 2017 and claimant responded no. Ms. O'Brien asked claimant how a customer did not receive their promotional gift card on August 16, 2017. Claimant responded she did not know. Ms. O'Brien asked claimant how the same promotional gift card was used by claimant on August 18, 2017 when she made a purchase. Claimant responded that she did not know. Claimant then told Ms. O'Brien she may have taken a promotional gift card because she thought it looked pretty and may have had an elephant on it. Ms. O'Brien told claimant that promotional gift cards do not have elephants on them and claimant respond that she knew that. Ms. O'Brien again asked claimant how a gift card was issued for a customer on August 16, 2017, but used by claimant on

August 18, 2017. Claimant told the employer she did not take the promotional gift card. Claimant repeatedly told Ms. O'Brien she did not recall and does not remember. Claimant asked if that was ok. Ms. O'Brien told claimant it was not ok and why did she use the guest's promotional gift card. Claimant told Ms. O'Brien do what you want, she does not care. Claimant told the employer it was discrimination and she was not comfortable. Claimant then left the room. Ms. O'Brien asked claimant to return to the room. Claimant returned to the room, but said she was not comfortable. Ms. O'Brien told claimant that keeping a promotional gift card may result in discharge. Claimant responded she wanted to transfer to a different store. Ms. O'Brien told claimant she was going to consult with human resources. Claimant told the employer she did not feel well and requested to go home for the day. Ms. O'Brien excused claimant for the day. As claimant was leaving, she stated she may have taken the promotional gift card by accident, but it was not on purpose. Ms. O'Brien denied yelling during the meeting. Claimant never mentioned to the employer that she received the promotional gift card as a gift from the customer.

On August 28, 2017, the employer told claimant she was discharged for violating its policy. Claimant had no prior disciplinary warnings for similar incidents. Ms. O'Brien is not aware if claimant told a team member she was going to quit if she did not get a transfer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted into evidence. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). "Theft from an employer is generally disqualifying misconduct." *Quintin H Wyatt v. The University Of Iowa*, 15B-UI-08148-EAB, (dated September 17, 2015); *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998). "Value is . . . not the issue" in determining misconduct and "a single attempted theft [may] be misconduct as a matter of law." *Quintin H Wyatt v. The University Of Iowa*, 15B-UI-08148-EAB, (dated September 17, 2015); *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy prohibiting employees from taking promotional gift cards that are for customers is reasonable. The employer's policy prohibiting employees from accepting gifts from customers is also reasonable.

Claimant's argument that the customer gave her the promotional gift card as a gift is not persuasive. The employer has presented substantial and credible evidence that on August 16, 2017, instead of giving a customer the promotional gift card the customer qualified for, she took the promotional gift card. The employer has presented substantial and credible evidence that claimant then used the promotional gift card when she made her purchase on August 18, 2017. Furthermore, when Ms. O'Brien confronted claimant about the promotional gift card, claimant continually denied taking the promotional gift card and never mentioned to the employer that it

was a gift from the customer. However, even if the customer gave the promotional gift card to claimant as a gift, the employer has a policy that prohibits employees from accepting gifts.

The employer has a duty to protect the safety of its customers' property, including any promotional gift cards they qualify for. Claimant's conduct on August 16, 2017 resulted in the customer not receiving a promotional gift card that the customer had qualified for. Claimant's conduct was contrary to the best interests of the employer and its customers. The employer has presented substantial and credible evidence claimant deliberately took a customer's promotional gift card on August 16, 2017 and then used it on August 18, 2017 for her own purchases, in violation of a company policy or procedure. The employer presented substantial and credible evidence that claimant's conduct was a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees[.]"Iowa Admin. Code r. 871-24.32(1)a. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The October 9, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs