

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA D SELWYN
Claimant

APPEAL NO: 12A-UI-06250-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 05/06/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Target Corporation (claimant) appealed a representative's May 23, 2012 decision (reference 01) that concluded Kayla D. Selwyn (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2012. The claimant participated in the hearing. John Yates appeared on the employer's behalf. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 21, 2010. She worked part time (15 to 25 hours per week) as a guest services team member in the employer's Sioux City, Iowa store. Her last day of work was April 10, 2012. The employer discharged her on April 12, 2012. The reason asserted for the discharge was excessive absenteeism.

Beginning in about December 2011, the claimant began calling in absences and leaving early, reporting knee pain; her doctor initially diagnosed her as having rheumatoid arthritis. After the separation, in June the claimant learned that she actually had Lyme's disease. The administrative law judge notes that questions as to the claimant's medical ability to work have been separately reviewed in decisions issued on May 16, 2012 (reference 03) (not medically able and available as of May 6, 2012) and on June 20, 2012 (reference 04) (medically able and available for work effective June 17, 2012).

The doctor advised frequent breaks from standing. From January through March during some construction, the claimant acted as a door guard, which allowed her to sit most of the time, so the frequency of her absences was reduced. However, on or about April 10 the claimant was returned to her regular cashiering duties. She was to work an 11:00 a.m.-to-2:00 p.m. shift. The employer had believed that there would be a stool available for the claimant at her register; but, when the claimant reported for work, no stool was available at her register. The claimant found she was experiencing significant pain, and so clocked out and left at 11:35 a.m. She was again scheduled for work on April 12; she called in an absence that day due to not feeling well.

As a result of the further absence on April 12, Yates, executive team leader, had a discussion with the claimant on that date regarding her attendance. He indicated that because of the claimant's absences and current inability to be able to work, her employment would be ended at that time, although he indicated to her that she could reapply for rehire after 90 days.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct, since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). Because the final absence was related to properly reported illness or other reasonable grounds, no final or

current incident of unexcused absenteeism occurred that establishes work-connected misconduct and no disqualification is imposed. While the employer may have had a good business reason for determining to end the claimant's employment, it has failed to meet its burden to establish misconduct. *Cosper, supra*. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 23, 2012 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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