

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J BOSTON

Claimant

APPEAL NO. 09A-UI-00584-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

**OC: 12/07/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

David J. Boston filed a timely appeal from an unemployment insurance decision dated January 8, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 29, 2009 with Mr. Boston participating and presenting additional testimony by Deb Boston. Human Resources Executive Team Leader Ali Batenhorst participated for the employer, Target Corporation. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: David J. Boston was employed by Target Corporation from June 14, 2005 until he was discharged November 17, 2008. He was a sales floor specialist. On the morning of November 13, 2008 Mr. Boston entered the store through the employee' entrance prior to opening time. Also prior to opening, he purchased a video game being released that morning as of the time the store opened. Mr. Boston had stocked the shelves the previous day. In hopes of purchasing the game, he had not placed a copy on the shelves but had put it in a drawer in the video games area. He pointed this out to the sales associate on duty when he made the purchase. Upon the opening of the store at 8:00 a.m., a customer spoke to another associate, Christopher Torola and pointed out that there were no copies of the new game on the shelf. The customer also stated that he had seen a person leaving the store before opening with a copy of the game. This led to an investigation through the store's sales recording equipment and video system. This investigation identified Mr. Boston as the one who had purchased the game.

Purchasing merchandise under such circumstances is contrary to company policy and makes an associate subject to discharge. The policy is addressed in orientation and in the company handbook. In addition, a reminder was placed in a newsletter in the store's break room during the month before the incident. On some occasions in the past, members of management have

authorized purchases of merchandise under these circumstances. Mr. Boston did not have authorization, however.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Mr. Boston did not deny purchasing the game or placing the game in the drawer rather than on the shelf. He acknowledged that he did not have permission from management to purchase the game prior to store opening. The administrative law judge concludes that the claimant deliberately hid the game and deliberately violated company policy. Benefits are withheld.

DECISION:

The unemployment insurance decision dated January 8, 2009. reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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