

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNE M WOODS

Claimant

APPEAL NO. 06A-UI-10183-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

**OC: 09/24/06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anne M. Woods (claimant) appealed a representative's October 17, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Target Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 16, 2006. The claimant participated in the hearing. Lisa Sherman 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?

FINDINGS OF FACT:

The claimant started working for the employer on April 13, 2004. She worked part time (approximately 32 hours per week) as a member of the sales floor team in the employer's Cedar Rapids, Iowa, area store. Her last day of work was September 25, 2006. The employer discharged her on that date. The reason asserted for the discharge was additional customer complaints after a final warning.

The claimant primarily worked in the toy, domestics, and sporting goods departments. She had received an initial warning regarding a customer complaint on September 16, 2005. On February 18, 2006, the claimant was given a final warning on a customer complaint after she requested a security guard escort a 13-year old girl out of the store when the girl had failed to stop throwing a ball against ceiling tile after being asked to stop. The final warning indicated that if there were any additional complaints in a 12-month period, the claimant was subject to discharge.

On September 22 the store received a complaint from a manager of another store who had called and spoken to the claimant without identifying themselves as a manager, asking the claimant to check clearance end caps for a particular item. The claimant initially indicated that they did not have the manpower for her to go looking for a clearance item that did not have a specified location, although she ultimately did go and look for the item; while the employer does not have any specific policy that excuses an employee from checking an area for a clearance item, the claimant's former supervisor had advised the staff in a team huddle that particularly during busy holiday times they

could decline to check for clearance items, and that they were to use their discretion on other occasions as to whether the store was not so busy that it would not affect service to other customers.

On September 24 the store received a complaint that some time prior to that day the claimant had been rude and impolite during a customer call inquiring as to whether a particular video game was in stock and whether it would be held for the customer. The claimant did remember the call, as she was aware that she was suffering from a diabetic low at the time for which she had been unable to summon assistance; during such episodes the claimant would have cognitive difficulties in speaking and communicating adequately, but could only make relatively terse statements. The employer had been aware that the claimant suffered from such episodes and had understood there had been some measures taken to allow the claimant to regularly carry such supplies as might treat a sudden low; however, the claimant indicated she was unaware of any such arrangement, and there was no specific evidence that there had been a definite arrangement made.

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).

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the additional complaints after the final warning. Misconduct connotes volition and intent. Huntoon, supra. Under the circumstances of this case, the claimant’s actions that were perceived as rude or impolite were either due to a good-faith reliance on prior instructions or to a health condition such as would preclude a conclusion that the actions were intentional. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, 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 October 17, 2006 decision (reference 01) is reversed. 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

ld/kjw