

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE J POORMAN
Claimant

APPEAL NO. 06A-UI-09905-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
c/o TALX UCM SERVICES INC
Employer

OC: 08-20-06 R: 03
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 28, 2006, reference 01, fact-finder's decision that held the claimant eligible to receive unemployment insurance benefits upon a finding that she was discharged under non-disqualifying conditions. After hearing notices were mailed to the parties, a telephone conference hearing was conducted from Des Moines, Iowa, on October 25, 2006. The claimant participated and testified. Appearing as witnesses for the employer were Teresa Feldmann and Jennifer Toenges.

ISSUE:

Did the claimant voluntary quit employment for reasons that qualify her to receive unemployment insurance benefits or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts: Ms. Poorman was employed by the Target Corporation from September 16, 2004 until on or about August 19, 2006 when she was separated due to a lack of work. Ms. Poorman held the position of warehouse packer and was employed on a full-time basis.

For medical reasons the claimant was granted an approved leave of absence on September 6, 2005 by Target Corporation. The initial paid portion of the leave of absence came to an end on May 5, 2006. Ms. Poorman returned to work for a period of time on June 20, 2006 with restrictions that were imposed by her physician. On July 7, 2006, the claimant was approved to be away from work for medical reasons for an undetermined period of time. The claimant was informed by the employer that upon being released by her physician that she could return to work "if her job was available." On or about August 15, 2006, Ms. Poorman called the company's Human Resources Department specifically indicating that she had been released by her physician effective August 19, 2006. The claimant was told at that time that her job position had been filled and no positions were available to her. The claimant was offered the possibility

of "seasonal" work and subsequently was also informed that no seasonal positions were available to her. The claimant reasonably concluded based upon the employer's actions and statements that she had been laid off work at the expiration of her approved leave of absence when the employer had no positions available to her.

After the claimant had been separated by the employer, there may have been some contact by Target Corporation employees who were unaware that the claimant had previously been released and separated by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in the record establishes that Ms. Poorman had been granted an initial leave of absence beginning in 2005 and ending in May 2006. The claimant returned to work for a period of time but was required to leave work again for medical reasons. The claimant was granted a leave of absence by the employer. The leave of absence period was to end upon the claimant's release by her physician. On August 15, 2006, the claimant contacted the company's Human Resources Department specifically indicating that she was being released effective August 19, 2006 and that the claimant was available for work. Ms. Poorman testified under oath that she was told at that time by a Human Resources employee, Amy Mosley, that the claimant's job position was filled and there was no other work available to her. The claimant was also then informed that seasonal work was also not available.

It is the opinion of the administrative law judge that this action by the employer led the claimant to reasonably conclude that she had been laid off work. The claimant had completed all the requirements necessary for her to return under the terms of the leave of absence that had been

granted. The claimant had supplied a doctor's release and was willing and able to return to work, however, the employer had no job positions available for the claimant. As there have been no allegations of misconduct on the part of the claimant, the administrative law judge is of the opinion that the claimant was separated under non-disqualifying conditions.

DECISION:

The fact-finder's decision dated September 28, 2006, reference 01, is affirmed. The claimant was separated under non-disqualifying conditions and is qualified for unemployment insurance benefits, provided that she meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw