

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBB L SMITH
Claimant

APPEAL NO. 08A-UI-05192-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 04/27/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 23, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 24, 2008. The claimant participated personally. The employer participated by Amanda Albaugh and Teresa Schmitt.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from August 21, 2007 until April 25, 2008 when he was discharged from employment. Mr. Smith was employed as a full-time warehouse worker.

The claimant was discharged based upon an incident that occurred on April 23, 2008. Based upon surveillance tapes that were reviewed by the employer, the employer believed that the claimant had acted aggressively towards a female worker and subsequently passing the female worker while operating a motorized merchandise cart. Based upon the company's policies which prohibit violence or threats of violence in the workplace, a decision was made to terminate Mr. Smith from his employment.

On the day in question the claimant had been confronted by the female worker regarding a personal issue that was non-work-related. In response to statements by the female worker, Mr. Smith attempted to tell the other worker to stop making comments of that nature at work. When the other worker was unwilling to listen and the exchange escalated, the claimant attempted to leave the area but returned based upon additional comments made by the female worker. Upon concluding the exchange, Mr. Smith passed the other worker whose cart was

stopping, so that the claimant could continue to perform his duties. No disciplinary action was taken against the female worker.

REASONING AND CONCLUSIONS OF LAW:

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

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36 (Iowa 1992).

The evidence in this case establishes that Mr. Smith was attempting to perform his duties until distracted by a female worker who was apparently argumentative about a previous non-work-related issue. Mr. Smith testified that he attempted to address the other worker's comments and attempted to leave the work area but was called back to the area by the ongoing comments of the female worker who was acting, in effect, in an abusive manner. Although agitated at the female worker's ongoing comments, the claimant did not believe that he was acting in a threatening manner or intimidating. When the exchange ended, the claimant passed the female worker who was stopping her motorized cart in order to continue to perform his duties. Based upon a review of the security tape by management, it appeared that Mr. Smith had acted inappropriately and a decision was made to terminate him.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Smith may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's conduct at worst was an isolated instance of poor judgment that did not rise to the level of intentional disqualifying misconduct.

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.

For the reasons stated herein, the administrative law judge concludes the claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

DECISION:

The representative's decision dated May 23, 2008, reference 01, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs