

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS A DUTLER**

Claimant

**APPEAL NO. 10A-UI-03154-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**

Employer

**Original Claim: 01/10/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Target Corporation (employer) appealed a representative's February 16, 2010 decision (reference 02) that concluded Douglas A. Dutler (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 April 12, 2010. The claimant participated in the hearing. Dan O'Brien 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 June 9, 2009. He worked full time on the evening shift as a warehouse worker in the inbound department of the employer's Cedar Falls, Iowa distribution center. His last day of work was December 23, 2009. The employer suspended him that day and discharged him on December 31, 2009. The reason asserted for the discharge was violation of the employer's violence-free workplace policy. The employer's policy gives as an example of unacceptable conduct "striking or shoving" another employee.

During the shift on December 23 the claimant was unloading boxes of product from a forklift onto a conveyer. A coworker came over to ask if he could assist the claimant. The claimant responded that he did not need any assistance, that he was nearly finished with that load. He asked the coworker to back up, as he was in the claimant's way, and then turned and picked up another box. When he turned back to put the box on the conveyer, the coworker was still so close to the claimant that he brushed the coworker's chest or shoulder with the box, causing the coworker to back up a few steps. The coworker then left the area without further discussion, and the claimant thought noting more of it. However, the coworker complained to the supervisor, and the claimant was then sent home and subsequently discharged due to the conclusion that he had violated the violence-free workplace policy.

## 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 that 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 that 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).

The reason cited by the employer for discharging the claimant is the conclusion that the claimant violated the employer's violence-free workplace policy. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant intended to "strike or shove" the coworker or that the contact was part of a hostile confrontation. Rather, the contact was inadvertent as the claimant was attempting to carry out his duties. Under the circumstances of this case, the claimant's contact with the coworker was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. 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 February 16, 2010 decision (reference 02) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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