

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DEBORAH L KRIEMAN  
7609 BUCKINGHAM SQ #296  
URBANDALE IA 50322**

**TARGET CORPORATION  
1000 NICOLLET MALL TPN130  
MINNEAPOLIS MN 55403**

**Appeal Number: 05A-UI-08194-JTT  
OC: 9/26/04 R: 02  
Claimant: Appellant (2R)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences

STATEMENT OF THE CASE:

Deborah Krieman filed a timely appeal from the August 2, 2005, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on August 25, 2005. Ms. Krieman participated in the hearing. Target did not respond to the hearing notice instructions and did not participate in the hearing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deborah Krieman was employed by Target as a full-time overnight stock person from May 11, 2005 until sometime between July 6 through 16, 2005, when Team Leader “Kristen” (last name

unknown) discharged her for misconduct based on excessive absences. There was no other reason for the discharge.

Ms. Krieman admits to having a poor memory when it comes to remembering dates. Ms. Krieman's memory difficulties worsen when she is not on her prescription medications. Some or all of the events at issue in this matter occurred at a time when Ms. Krieman was without her medications for several days.

Ms. Krieman suffers from a seizure disorder, depression and anxiety. Ms. Krieman takes prescription medications to address these issues. The medications include Effexor and Alprazolam. Ms. Krieman ran out of her medications on June 30. Ms. Krieman's registered nurse practitioner's office closed early on July 1 and Ms. Krieman was unable to refill her medications. Ms. Krieman had previously provided the employer with information from her registered nurse practitioner regarding her mental and physical health. This information indicated that Ms. Krieman suffered from seizures, but could function so long as she remained on her medications.

At the time Ms. Krieman reported to work on July 2, 2005, she had been without her medications for two days. While Ms. Krieman was performing her duties of unloading boxes from one area and stacking them in another, she was unable to hold onto the boxes and was dropping the boxes. Ms. Krieman was experiencing body tremors. Ms. Krieman did not want to bring her physical symptoms to the attention of her supervisor. An employee working near Ms. Krieman alerted the supervisor that something was wrong. Ms. Krieman asked to go home early to avoid any further embarrassment and was allowed to leave work early.

Ms. Krieman did not make contact with the registered nurse practitioner to obtain new prescriptions until July 6, 2005. In the meantime, Ms. Krieman experienced multiple seizures and suffered multiple lacerations after she suffered a seizure outside her home. After Ms. Krieman obtained her medications on July 6 or 7, it was two or three days before Ms. Krieman experienced sufficient benefit from the medications to return to "normal" functioning.

At some point subsequent to Ms. Krieman's early departure on July 2, Ms. Krieman attempted to return to work. Whether this occurred on Monday, July 4, Monday, July 11, or on some other date is not clear. At the time Ms. Krieman attempted to report to work, an assistant manager informed Ms. Krieman that she would not be allowed to return to work until she provided a doctor's note. Ms. Krieman obtained a note from the registered nurse practitioner and provided the note to the employer. Ms. Krieman subsequently contacted her immediate supervisor, "Kristen," by telephone to inquire about returning to the employment. Kristen advised Ms. Krieman that she had been discharged from the employment.

Prior to June 27, Ms. Krieman had received a warning for having been absent from work on two occasions. Ms. Krieman's supervisor warned Ms. Krieman that she would be discharged if she were absent a third time during her 90-day probationary period. It was in response to this reprimand that Ms. Krieman provided information from the registered nurse practitioner regarding her health issues.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Krieman was discharged for misconduct in connection with her employment based on excessive unexcused absences.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Because the claimant was discharged, the employer bears 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 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, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In order for Ms. Krieman's absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the evidence must establish that Ms. Krieman's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record is limited to the testimony of Ms. Krieman. The evidence indicates that Ms. Krieman was discharged and did not quit the employment. The evidence indicates that Ms. Krieman suffers from illness that diminishes her ability to function if she is without her medications. The employer had the burden of proving that Ms. Krieman's absences were unexcused under the law and that the unexcused absences were excessive. The employer otherwise had the burden of proving misconduct sufficient to disqualify Ms. Krieman for unemployment insurance benefits. The employer has failed to meet its burden of proof to any extent.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Krieman was discharged from the employment for no disqualifying reason. Accordingly, Ms. Krieman is eligible for benefits, provided she is otherwise eligible.

Ms. Krieman's testimony raises the issue of whether she is able and available for employment. See Iowa Code section 96.4(3). This issue will need to be addressed upon remand to the fact finder. Ms. Krieman should contact her local Workforce Development Center upon receipt of his decision.

**DECISION:**

The representative's decision dated August 2, 2005, reference 04, is reversed. The claimant was discharged from her employment for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The matter is remanded for a determination of whether the claimant has been able and available for work since establishing her additional claim for benefits, effective July 10, 2005.

jt/kjw