

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GEORGE K TJABRING
Claimant

TARGET CORPORATION
Employer

APPEAL 23A-UI-11026-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/29/23
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Target Corporation, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) November 15, 2023 (reference 01) unemployment insurance (UI) decision. IWD found Mr. Tjabring eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed him from work on October 21, 2023 for a reason that did not disqualify him from receiving UI benefits. On November 30, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Tjabring for a telephone hearing scheduled for December 13, 2023.

The undersigned administrative law judge held a telephone hearing on December 13, 2023. The employer participated through Shi Howland, human resources (HR) business partner and Christopher Beas, operations manager. Mr. Tjabring did not participate in the hearing. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUES:

Did the employer discharge Mr. Tjabring from employment for disqualifying job-related misconduct?

Did IWD overpay Mr. Tjabring UI benefits?

If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Tjabring began working for the employer in September 2021. He worked as a full-time warehouse worker. His employment ended on October 21, 2023.

On Monday, October 16, 2023, an employee reported to Mr. Beas and another manager that Mr. Tjabring and another employee were in an argument. Mr. Beas and the other manager took Mr. Tjabring to an area away from other employees and asked him about the argument. Mr. Tjabring stated: "I cannot control my anger when I'm mad, he almost hit me and I would have

¹ Appellant is the person or employer who appealed.

killed him if he touched me.” Mr. Beas immediately reported Mr. Tjabring’s statement to upper management and HR.

The employer’s policy prohibits acts or words that harm or endanger any person, harm, or endanger the employer’s property, or cause a person to have to a reasonable belief that the person, their property, other persons, or other persons’ property are in danger. The policy provides that an employee who violates the policy is subject to the employer disciplining the employee, up to and including terminating the employee’s employment. Mr. Tjabring received a copy of the policy on, or about, his hire date. The employer concluded that Mr. Tjabring statement violated the employer’s policy. So, the employer terminated his employment on Saturday, October 21.

IWD has not paid Mr. Tjabring any REGULAR (state) UI benefits on his UI claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Tjabring from employment for disqualifying, job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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.

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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.

The employer has the burden of proof in establishing disqualifying job misconduct.² The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.³ Misconduct must be “substantial” to warrant a denial of job insurance benefits.⁴

The employer may establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Mr. Tjabring threatened another employee

² *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

³ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁴ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

and Mr. Beas reasonably believed that the other employee was in danger. This is disqualifying, job-related misconduct. Mr. Tjabring is not eligible for UI benefits.

The administrative law judge further concludes IWD did not overpay Mr. Tjabring any REGULAR (state) UI benefits.

Iowa Code §96.3(7) provides, in relevant part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since IWD did not pay Mr. Tjabring any UI benefits, IWD did not overpay him any UI benefits.

DECISION:

The November 15, 2023 (reference 01) UI decision is REVERSED. The employer discharged Mr. Tjabring from employment for job-related misconduct. Mr. Tjabring is not eligible for UI benefits until he has worked in and been paid wages for insured work equal to ten times his weekly UI benefit amount, as long as no other decision denies him UI benefits.

Since IWD has not paid Mr. Tjabring any UI benefits, IWD did not overpay Mr. Tjabring UI benefits.



Daniel Zeno
Administrative Law Judge

December 18, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.