

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY L FURNISS
Claimant

APPEAL NO. 10A-UI-02331-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 01/03/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge/Suspension for Misconduct

STATEMENT OF THE CASE:

Target Corporation filed an appeal from a representative's decision dated February 5, 2010, reference 01, which held that no disqualification would be imposed regarding Anthony Furniss' separation from employment. After due notice was issued, a hearing was held by telephone on March 24, 2010. Mr. Furniss participated personally. The employer participated by Nicole Pealer, Human Resources Team Leader, and Patricia Byrne, Store Team Leader.

ISSUE:

At issue in this matter is whether Mr. Furniss was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Furniss began working for Target Corporation on June 10, 2008 and last performed services on January 4, 2010. He worked from 20 to 30 hours each week as a floor team member. He was suspended after he was charged with possession of a controlled substance, marijuana, on December 29, 2009. The charge stemmed from an arrest that was made during his off-duty time.

Mr. Furniss' conduct was considered a violation of the employer's substance abuse policy and, therefore, he was suspended pending resolution of the charge. He entered a plea of "not guilty" to the charge and the matter is set for trial on April 28, 2010. The pending criminal charge for possession of illegal drugs was the sole reason for Mr. Furniss' suspension.

REASONING AND CONCLUSIONS OF LAW:

Where an individual is on a suspension imposed by the employer, he is considered discharged and the issue of misconduct must be resolved. 871 IAC 24.32(9). An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of

proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Furniss is on suspension because he has criminal charges pending.

If Mr. Furniss is convicted of possession of marijuana, the employer will consider him to be in violation of the substance abuse policy. It is axiomatic that he is entitled to the presumption of innocence. The matter is still pending in the court system. There is no independent evidence to establish a violation of the employer's substance abuse policy. Inasmuch as there was no other reason for the separation, it is concluded that the employer has failed to satisfy its burden of proof in this matter. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated February 5, 2010, reference 01, is hereby affirmed. Mr. Furniss was suspended by Target Corporation but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs