

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL SMART
Claimant

APPEAL NO. 09A-UI-05562-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 03/15/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 6, 2009, reference 01, which denied benefits based upon his separation from Target Corporation. After due notice, a telephone conference hearing was scheduled for and held on May 5, 2009. The claimant participated personally. The employer participated by Alan Schultz, Kerry Sweeney and Lindsay Polking.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: Nathaniel Smart was employed by Target Corporation from October 31, 2006 until March 16, 2009. The claimant worked as a part-time night stocker and was paid by the hour. His immediate supervisor was Alan Schultz.

The claimant was discharged based upon an incident that took place on March 15, 2009. At that time the claimant and another worker became involved in a physical altercation at work. A supervisor that was on duty, Mr. Schultz, attempted to separate the parties and instructed Mr. Smart to go to a different area of the facility to wait. A few moments later Mr. Smart came back to the area and displayed an aggressive attitude where again he had to be instructed to leave the area.

The company has a strict zero tolerance for violence in the workplace policy and employees are subject to immediate discharge for violation of the policy. The claimant was aware of the policy and had signed an acknowledgement of receiving the company policy at hire. Both the claimant and the other worker were discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his employment. It does.

The evidence establishes that Mr. Smart was aware of the company policy which prohibited the threat or acts of violence in the workplace. The claimant was aware that violating the policy could result in immediate termination from employment. On March 15, 2009, Mr. Smart and another worker engaged in a physical confrontation. Although instructed to leave the area Mr. Smart returned in an aggressive manner causing his supervisor to believe that he was rekindling the confrontation. The confrontation was videotaped on surveillance cameras. A review of the camera's tape showed that Mr. Smart as well as the other employee were acting aggressively during the altercation and that Mr. Smart was not merely acting to contain the other worker.

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 that the employer has sustained its burden of proof in establishing the claimant was discharged for misconduct in connection with his work. Benefits are withheld.

DECISION:

The representative's decision dated April 6, 2009, reference 01, is affirmed. Nathaniel Smart is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, providing that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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