

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EILEEN T STERN**

Claimant

**APPEAL NO: 12A-UI-13875-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**

Employer

**OC: 10/28/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Eileen T. Stern (claimant) appealed a representative's November 16, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Target Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2012. The claimant participated in the hearing. Jessica Zeimet 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?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on October 13, 2011. She worked part time (about 20 hours per week) as a cashier at the employer's Cedar Rapids, Iowa store. Her last day of work was October 26, 2012. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The claimant had about 51 absences in 2012. About 15 of those were due to personal illness, and at least that many were due to the claimant's daughter's medical condition. The employer did not consider the claimant's absences due to personal illness or due to her daughter's condition to be unexcused. The employer had several absences for which it did not have a noted call in or reason given; however, the claimant had always called in, and until October 2012, the absences were either for her own illnesses or her daughter's medical condition. Due to the number of occurrences the employer had given the claimant a final warning on July 29, 2012.

The claimant had some absences in October due to her daughter's medical condition. On October 23, 2012, however, she was absent because she was arrested on an outstanding warrant due to parking tickets incurred by her daughter and her niece. She was scheduled for work on October 24, but prior to her shift she received a call reporting that her brother had suffered a massive heart attack while in Waterloo and had been taken to the hospital. As a result, she called in to report she would be absent that day, as she went to be with her brother and her niece. On October 25 she was scheduled to work but as her brother was undergoing triple bypass surgery at that time she decided to stay in Waterloo, so she called to report she would be absent from work that day. She returned to work on October 26, but because of her absences that week after her warning in July, the employer determined to discharge her.

### **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 which 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 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. 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).

Excessive unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to reasons such as properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). Here, only the October 23 absence could be treated as clearly unexcused; the absences on October 24 and October 25 were due to a bona fide family emergency. Because the final absence was related to properly reported illness or other reasonable grounds, no final or current

incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. Further, while the claimant might have had excessive absenteeism and the employer may have had a good business reason for discharging the claimant, it has not established that the claimant had excessive unexcused absences. The employer has failed to meet its burden to establish misconduct. *Cosper, supra*. 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 November 16, 2012 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she 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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