IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL L WALTHER Claimant	**APPEAL NO. 17A-UI-05920-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION**
TARGET CORPORATION Employer	
	OC: 05/07/17 **Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Walther (claimant) appealed a representative's June 6, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Target (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 27, 2017. The claimant participated personally. The employer participated by Jessica Grandgenett, Human Resources Business Partner, and Benjamin McAllister, Operations Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 21, 2007, as a full-time warehouse worker. The employer has a handbook but the claimant did not sign for receipt of it. The employer has a policy that says an employee who receives three corrective actions in one year will be terminated if he receives another corrective action within twelve months.

In about 2013, a supervisor took the claimant around the workplace to have the claimant make apologizes to his co-workers for whatever the supervisor demanded. The co-workers, including, Mr. Bessman, laughed at the claimant. Eventually the supervisor left. Mr. Bessman was not kind to the claimant.

On June 24, 2016, the employer issued the claimant a written warning for not notifying the employer of his absence on June 19, 2016. The claimant did not have any attendance issues and on this one occasion he mixed up the days he was working. On December 15, 2016, the employer issued the claimant a written warning for having a negative trend in teamwork. When the claimant marched with others at the start of his shift, the employer did not think he raised his knees high enough. When he performed the work successfully as a team, his co-worker, Mr. Bessman complained that it was not enough.

On January 19, 2017, the employer issued the claimant a written warning for a negative trend in teamwork after the claimant and co-worker Reuben successfully worked together to develop a plan and unload a trailer. The warning was issued because the plan might have failed. The employer told the claimant he should try to work slower and less efficiently to get along better with others. The employer issued the claimant another warning on January 19, 2017, for having three written warnings. The employer notified the claimant that further infractions within a year would result in termination from employment.

On March 24, 2017, the employer noted that a supervisor issued the claimant a coaching for his failure to ask permission to work as a team and perform the necessary tasks to unload a trailer. The claimant did not have this conversation. The claimant understood his role at the company was to work as a team member and to perform the necessary tasks to complete the goal. Permission was never required to perform necessary tasks.

On April 20, 2017, the employer issued the claimant a coaching for not performing a task he was not instructed to do. Employees from the prior shift did not leave instructions to collect certain items. Without the note, the claimant would not have known to collect the items. The claimant's co-worker, who was in the same circumstance, did not receive a coaching from the employer.

On May 4, 2017, the claimant's supervisor told the claimant and Mr. Bessman to proceed to the 400 dock and preform work. The supervisor said that if the 400 dock was too crowded, they could work on the 100 dock. The claimant went to the 400 dock. One of the docks was crowded and the other required two people to perform the required work. Mr. Bessman was nowhere to be found. The claimant told Reuben to tell Mr. Bessman he was going to the 100 dock. Rather than perform no work, the claimant worked for fifteen to twenty minutes at the 100 dock. He then returned to the 400 dock. Mr. Bessman, who had been taking a break in the packaging office for ten or fifteen minutes, reported the claimant as missing to the supervisor. Mr. Bessman said he did not know where the claimant went. On May 5, 2017, the employer terminated the claimant for having a negative trend for teamwork.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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:
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> 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Besides the one time failure to properly report his absence on June 19, 2016, this administrative law judge cannot find any conduct that rises to the level of misconduct. The claimant was terminated for failure to lift his legs high enough when marching, failure to follow instructions that were not given, being successful at plans that might have failed, performing tasks as part of a team, and working while co-workers took breaks and tattle. The employer did not provided sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative’s June 6, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs