IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DENNIS L BOYD
Claimant

TARGET CORPORATION
Employer

APPEAL NO. 09A-UI-00033-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/30/08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Target Corporation (employer) appealed a representative's December 23, 2008 decision (reference 01) that concluded Dennis Boyd (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 14, 2009. The claimant participated personally. The employer participated by Avalon Brassey, Executive Team Leader for Human Resources; Sherley Lamarre, Executive Team Leader for Human Resources; and Dolly Crandall, Executive Team Leader for Human Resources.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 11, 2008, as a part-time back room associate. The claimant signed for receipt of the employer's handbook on November 11, 2008. The handbook contained a progressive disciplinary policy. This policy did not apply to newly-hired employees. The employer issued the claimant no warnings during his employment.

On November 29, 2008, the claimant put his keys in the bailer and compacted items. He then took a call from the employer and was told to perform a different task. He inadvertently left his keys in the bailer. The employer terminated the claimant on November 30, 2008.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer provided a single incident of carelessness for which the claimant was terminated. One incident of carelessness is not sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 23, 2008 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw