

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN M LINCK
Claimant

APPEAL NO. 17A-UI-09068-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 08/06/17
Claimant: Appellant (5)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sean Linck (claimant) appealed a representative's August 28, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Target (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 3, 2017. The claimant participated personally. The employer did not wish to participate in the hearing. Exhibit D-1 was received into evidence. The claimant offered and Exhibit A was received into evidence.

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 May 12, 2015, as a full-time out-bound warehouse worker. He had shoulder surgery in February 2017, and was released to return to work without restrictions on July 1, 2017. He worked on July 1, 2 and 3, 2017. The claimant felt he could not perform the work after July 3, 2017. He called in absent on July 7, 8, 9, 15, 16, and 17, 2017. The claimant did not return to his doctor to seek treatment or have a discussion about his ability to perform work with this employer.

On July 19, 2017, the employer sent the claimant a letter stating, "**If I do not receive information from your medical provider by August 2nd 2017 AND you do not contact me by August 2nd 2017 no later than 3:00 pm to review**, Target will assume you are not interested in returning to work and will administratively separate your employment." On August 4, 2017, he met with the employer. The claimant told the employer he could not perform the work anymore. He did not ask his doctor to provide any corroborating documentation. The claimant asked the employer for other jobs he might perform. The employer had no other jobs available. The employer ended his employment.

The claimant is seeking work he can perform with shoulder issues, nerve damage, a bulging disc, unexplained weight loss, and a decreasing ability to walk without a brace.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by failing to follow the employer's instructions with regard to providing medical documentation and meeting with the employer prior to August 2, 2017. While he did meet with employer on August 4, 2017, he did not provide the required documentation. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 28, 2017, decision (reference 01) is modified with no effect. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs