

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK D COLE**  
Claimant

**APPEAL NO. 11A-UI-02195-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 01/09/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated February 18, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 22, 2011. The claimant participated personally. The employer participated by Gayla Stromquist and Nicole Pealer. Exhibits 1 and 2 and 5 through 9 were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Patrick Cole was employed by Target Corporation from August 17, 2010, until November 3, 2010, when he was discharged from employment. Mr. Cole worked as a part-time unloader and was paid by the hour. His immediate supervisor was Gayla Stromquist.

Mr. Cole was discharged on November 3, 2010, based upon his third no-call/no-show during the short period of his employment with the company. Under company policies, employees are to call in two hours before their work shift by special agreement. Unloaders were allowed to call in within a two-hour period before or after the beginning of the work shift. Mr. Cole had been specifically warned about his obligation to report for scheduled work or to provide proper notification. The warnings were issued on September 27, 2010, and October 22, 2010.

The company utilizes a special telephone system that alerts all individuals working in the store during non-business hours that a telephone call is incoming. Ms. Stromquist was on duty and received no call from Mr. Cole within the time frame allowed to report an impending absence on October 30, 2010. It is the claimant's position that one of his previous no-call/no-shows should have been excused and that his failure to call in within the two-hour time limit on October 30, 2010, should be excused because of circumstances.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient the denial of unemployment insurance benefits. It is.

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 Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must be both excessive and unexcused. The Court held that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

The evidence in this case establishes that Mr. Cole had previously been warned for failure to report or provide proper notification and was aware that future violations could result in his termination from employment. The claimant was discharged after he failed to report for work on October 30, 2010, and did not provide proper notification to the employer. This conduct showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated February 18, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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