

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARQUAN L STOVALL
Claimant

TARGET CORPORATION
Employer

APPEAL 19A-UI-09986-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/17/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 12, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 14, 2020, at 8:00 a.m. Claimant participated. Employer participated through Jessica Grandgennett, Human Resources Business Partner, and Jarred Ryherd, Operations Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time warehouse worker from May 3, 2017 until his employment with Target Corporation ended on November 16, 2019. (Ryherd Testimony; Grandgennet Testimony) Claimant worked Saturday through Monday from 6:00 a.m. until 6:00 p.m. (Ryherd Testimony) Claimant's direct supervisor was Jarred Ryherd, Operations Manager. (Ryherd Testimony)

Employer has a policy that requires employees to use a step stool to load boxes at a height that would be over their heads. (Ryherd Testimony) The policy is outlined in the employee handbook and taught during training. (Ryherd Testimony) Claimant received a copy of the handbook and attended training on the use of the step stool. (Ryherd Testimony) The policy is intended to eliminate repetitive motion of reaching over head, which puts employees at a risk of shoulder and back strain. (Ryherd Testimony)

On June 2, 2019, claimant received a verbal warning for failure to use the step stool when loading boxes over his head. (Ryherd Testimony) On July 13, 2019, claimant received a written warning for failure to use a step stool. (Ryherd Testimony; Exhibit 1, pp. 7-8) The warning states that further unacceptable conduct will result in corrective action, up to and including termination of employment. (Exhibit 1, p. 8) On November 14, 2019, claimant received a verbal warning for failure to use his step stool. (Ryherd Testimony)

On November 16, 2019, claimant loaded boxes over his head without using a step stool. (Ryherd Testimony) On November 16, 2019, employer discharged claimant for failure to use a step stool in violation of company policy. (Ryherd Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer’s testimony to be more credible than the claimant’s testimony.

Claimant loaded boxes above his head without using a step stool in violation of company policy and after receiving multiple warnings for that very conduct. Claimant’s actions were a deliberate violation or disregard of standards of behavior employer had a right to expect of claimant. Claimant was discharged for a current act of disqualifying work-related misconduct. Benefits are denied.

DECISION:

The December 12, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/scn