

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTNI A CAIN
Claimant

APPEAL NO. 09A-UI-15466-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 08/30/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Target Corporation filed an appeal from a representative's decision dated October 5, 2009, reference 01, which held that no disqualification would be imposed regarding Brittnei Cain's separation from employment. After due notice was issued, a hearing was held by telephone on November 16, 2009. Ms. Cain participated personally. The employer participated by Jean Daugherty, Human Resources Team Leader.

ISSUE:

At issue in this matter is whether Ms. Cain was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Cain was employed by Target Corporation from October 20, 2008 until September 2, 2009. She worked approximately 30 hours each week as a cashier. She was discharged because of her attendance.

Ms. Cain was absent on 14 occasions during calendar year 2009, due primarily to her own illness. Her absences of February 10, February 22, and April 13 were for unknown reasons. She was absent on January 10 because of weather conditions and on July 29 because of the lack of childcare. Ms. Cain received written warnings regarding her attendance on January 30, February 19, and March 28. Her final absences were on August 12 and August 26 and were due to illness. She was discharged on September 1. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified

from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. In order for a disqualification to be imposed, the evidence must establish a current incident of unexcused absenteeism. See 871 IAC 24.32(8).

In the case at hand, Ms. Cain's discharge was prompted by her final absence of August 26. The absence was due to illness and was properly reported. Therefore, it is an excused absence. The same is true of the next most prior absence of August 12. The absence of July 29 is unexcused as it was due to a matter of purely personal responsibility, childcare. However, an absence that occurred on July 29 would not represent a current act in relation to the discharge that occurred on September 1. For the above reasons, it is concluded that a current act of unexcused absenteeism has not been established. As such, no disqualification is imposed.

DECISION:

The representative's decision dated October 5, 2009, reference 01, is hereby affirmed. Ms. Cain was discharged by Target Corporation but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css