

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A TAYLOR

Claimant

APPEAL NO. 07A-UI-00717-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

**OC: 12/03/06 R: 02
Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Target Corporation (employer) appealed a representative's January 3, 2007 decision (reference 01) that concluded Mark A. Taylor (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because he voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2007. The claimant participated in the hearing. Kristin Prendergast and Steve Howell appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in August 2005. The claimant started as a part-time employee. In August 2006, the claimant started working as a full-time electronic specialist.

On September 4, 2006, the claimant reported a work-related injury. This was the claimant's second work injury since late June 2006. The manager on duty authorized the claimant to go to a doctor. The claimant went to his personal physician.

On September 6, Prendergast talked to the claimant. She acknowledged the claimant should have been told to submit to a drug test on September 4 when he received treatment for a work injury, but had not been told about the drug test. The employer, however, still required the claimant to submit a drug test at a clinic the employer chose. Prendergast told the claimant to

go to Concentra Clinic, a walk-in clinic, to have a drug test taken within 24 hours. Prendergast also informed the claimant that he could no longer see his personal physician, but had to be treated by the employer's physician. Prendergast understood the claimant would go to the clinic for the drug test the next day.

The claimant did not have a drug test taken in 24 hours. Instead, he waited until he got an appointment with a doctor at the employer's clinic. This did not occur until September 14. Prendergast did not know about the drug test delay until she returned from her honeymoon. On October 31, Prendergast gave the claimant a written warning for failing to follow her directions about submitting to a drug test by September 7, 2006. The warning informed the claimant that if a similar incident occurred in the next six months, the employer could discharge him. The claimant considered the warning intimidation and a threat to his job security.

After the claimant received the written warning, the claimant felt the employer subjected him to a hostile work environment. The claimant asked to transfer to another store, but the employer denied this request. The claimant did not report problems to Prendergast or anyone in upper management who did not work at the store. The employer has a list of upper management personnel and their phone numbers listed in a break room. The employer also has a hotline number employees can call to report problems.

On November 8 or 9, 2006, the employer gave the claimant his 90-day evaluation as an electronic specialist. The evaluation informed the claimant about three areas in which the employer wanted him to improve. The first was getting along with his co-workers. Two co-workers complained that the claimant talked about co-workers personal lives and asserted the claimant spread rumors. The claimant disagreed that he had done anything like this. The employer also indicated the claimant needed to improve his attendance and to be more safety conscious. The 90-day evaluation also mentioned the claimant's failure to take a drug test within 24 hours after Prendergast directed him to take a test. The claimant did not believe he needed to improve in these areas. The claimant became frustrated and upset after the employer told him about the areas he needed to improve. The claimant concluded the employer treated him unfairly and deliberately tried to create a hostile work environment for him. The claimant left the evaluation early.

The next day, the claimant submitted his written resignation. The claimant informed the employer he was resigning in part because of a hostile work environment. The claimant's last day of work was November 25, the date the claimant chose.

The claimant established a claim for unemployment insurance benefits during the week of December 3, 2006. The claimant filed claims for the weeks ending December 9, 2006, through January 27, 2007. The claimant received his maximum weekly benefit amount of \$143.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant voluntarily quit his employment when he submitted his resignation on November 10 or 11, 2006. When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits without good cause when he leaves after being reprimanded by the employer. 871 IAC 24.25(28). Although the claimant asserted his written

warning was not warranted, the facts indicate he did not follow Prendergast's instructions or even an insurance representative's instructions about taking a drug test within 24 hours. Even though the claimant asserted he was unable to make an appointment to see the employer's doctor until September 14, a doctor's appointment was not necessary for him to take a drug test. While the employer could have discharged him for failing to submit to a drug test on September 7, the employer did not discharge the claimant.

While it is understandable that the claimant did not appreciate receiving a written warning, he could have used the employer's hotline or called a district manager who gave him positive feedback to report problems with management at the claimant's store. The claimant did not do this.

The fact an employer reprimands an employee or expresses areas where an employee needs to improve does not mean an employee works in a hostile work environment. The evidence does not establish that the claimant worked in intolerable working conditions or a hostile work environment. The facts establish the claimant quit because the employer reprimanded him, which an employer has the right to do. The claimant quit for personal reasons that do not qualify him to receive unemployment insurance benefits. As of December 3, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending December 9, 2006, through January 27, 2007. The claimant has been overpaid \$1,144.00 in benefits he received for these weeks.

DECISION:

The representative's January 3, 2007 decision (reference 01) is reversed. The claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 3, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending December 9, 2006, through January 27, 2007. The claimant has been overpaid and must repay a total of \$1,144.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css