

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHILLIP W CALDERON**  
Claimant

**APPEAL NO: 14A-UI-04568-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 04/13/14  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Phillip W. Calderon (employer) appealed a representative's April 30, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Target Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 5, 2014. The claimant participated in the hearing. Tom Schmeling 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.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on June 19, 2001. He worked full time as an in-stock team member at the employer's Urbandale, Iowa store. His last day of work was April 10, 2014. The employer discharged him on that date. The stated reason for the discharge was usage of vulgar language after a prior warning.

The employer had given the claimant a written warning for the usage of inappropriate language on January 21, 2014. As a result, the claimant was placed under a six-month observation period in which he could have no further incidents. On or about April 6 the employer received a report that the claimant had made comments to another team member while on the sales floor talking about a team leader in which the claimant used vulgar terminology. On April 7 Schmeling, the executive team leader, spoke with the claimant about the report. The claimant initially denied using vulgar language, but then acknowledged that in reference to something the team leader had done that he had said that it was "f - - - ing b - - - s - - - ." Because the claimant

had previously been warned regarding the use of vulgar language, the employer discharged the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's usage of vulgar language after previously being warned shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's April 30, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 10, 2014. This disqualification continues until the claimant 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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