

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER A DANIEL
Claimant

APPEAL NO: 09A-UI-10469-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 06/07/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Target Corporation (employer) appealed a representative's July 13, 2009 decision (reference 01) that concluded Christopher A. Daniel (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 7, 2009. The claimant participated in the hearing. Jennifer Lynch appeared on the employer's behalf. One other witness, Lisa McCarty, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibit One was entered into evidence. 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?

FINDINGS OF FACT:

After beginning to work for the employer as a seasonal employee in October 2007, the claimant became a permanent employee of the employer on March 8, 2008. He worked part time (24 to 32 hours per week) as a team member on the overnight team at the employer's Waterloo, Iowa store. His last day of work was June 9, 2009. The employer discharged him on that date. The reason asserted for the discharge was being disorderly on May 29 after having been given a warning on July 4, 2008.

On May 29 the claimant was assisting in unloading a truck and was using a scanning device that was not working very well, so the product was backing up on the line. He became frustrated and shook the scanner so that it slipped from his hands and flew about four feet where it hit some shelving. The scanner was not damaged. The employer also asserted that the claimant had been swearing during this time. The claimant acknowledged that as he was becoming frustrated with the situation, he had done some swearing under his breath. It was not directed at anyone, and the employer did not know what specific language the claimant had used. Ms. Lynch, the executive team leader who had been assisting with the unloading of the truck, later counseled him that he needed to do better in the future in dealing with his

frustrations. She did not advise him that the matter would be further reviewed for disciplinary action. There was no further contact with the claimant on the matter until the employer discharged him on June 9, although the claimant continued to work three or four days per week.

The claimant had been given a warning on July 4, 2008 for an argument and confrontation he had with a coworker in which there was physical touching by the claimant of the coworker in frustration with the argument. The warning specified that “under no circumstances is it appropriate for you to raise your voice to another team member. When interacting with other team members you must maintain your composure at all times. When you raise your voice you create a hostile work environment that effects (sic) the whole team.” The warning then advised the claimant, “If you repeat such conduct in the next 12 months you will be subject to termination.” The employer discharged the claimant asserting that the May 29 incident was a further violation of the same conduct covered by the July 4, 2008 warning.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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. 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. 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his behavior on May 29 in light of the July 4, 2008 warning. The claimant's conduct on May 29 was not sufficiently similar to the confrontation and conduct on July 4, 2008 so that he should have realized that it was a repetition of the conduct so as to put his job in jeopardy. Further, the discharge was not for a current act as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred eleven days prior to the employer's discharge of the claimant, and he had not been advised during that period that further review and disciplinary action might be pending. The

employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 13, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs