

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRENT M BUNDY**  
Claimant

**APPEAL NO: 10A-UI-03203-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 01/31/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Target Corporation (employer) appealed a representative's February 19, 2010 decision (reference 01) that concluded Brent M. Bundy (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 April 12, 2010. The claimant participated in the hearing. Brandelle Slater appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were 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:**

The claimant started working for the employer on October 19, 2008. He worked part time (20 – 30 hours per week) as a sales floor team member at the employer's Cedar Rapids, Iowa store. His last day of work was January 1, 2010. The employer discharged him on that date. The reason asserted for the discharge was the making of a purchase contrary to the team member purchase guidelines.

The guidelines provide that items that have a restricted release date to be available for sale to the public, such as movies or books, cannot be purchased by team members until the store opened on the date of public release. Another portion of the guidelines indicates that team members should not make personal purchases while "on the clock."

The claimant worked a late evening shift on December 14, 2009. The store was on holiday hours and closed at 12:00 a.m. (December 15, 2009). The store would not open again to the public until 8:00 a.m. December 15. At 12:12 a.m. the claimant purchased two movies that had a release date of December 15, 2009. The claimant was still "on the clock" when he made the purchase; he clocked out at 12:14 a.m. The claimant had observed that despite the policy it was common practice for employees, including managers, to make purchases while still "on the

clock,” so while he realized his purchase was technically against the policy, he did not believe it was likely to result in discharge. He determined to make the purchase while still on the clock as most of the registers were closed or were closing, and he wished to make the purchase before the final registers did close.

Since the movies’ release date was December 15, the claimant was unsure if he could purchase the movies at that time since it was technically December 15. The claimant inquired of the entertainment specialist, not a manager, who said she was not sure, but thought he probably could not make the purchase at that time. He asked the manager on duty, who said that she was not positive, but that if the register allowed the transaction to “pursue” or to continue, that it must be alright, as the registers were set to block sales of items prior to the release date. He then proceeded to attempt the purchase, and the register did not block the sale, so he completed the purchase and clocked out. He was then told by the entertainment specialist that she had concluded that indeed he could not make the purchase. Since he had already made the purchase under the guidance provided by the manager on duty, and since the registers were all now closed so that he could not have voided the sale, he did not take any other action at that time. He further did not believe his action caused harm to the employer and would result in discharge because had he not purchased and kept the movies at that time, his plan was to go from the employer’s store to a nearby competitor’s store that was open 24 hours, where he could have purchased the movies anytime after 12:00 a.m.

Other team members were aware of the claimant’s transaction and reported it to the human resources department on December 16. The claimant was informed on December 16 that an investigation was underway that could result in disciplinary action. The claimant was in receipt of the employer’s team member purchase guidelines which address both purchasing “on the clock” and restricted release date purchasing; those guidelines provide that “violations of any of the above policies may lead to corrective action up to and including termination.” The claimant was not on notice of or aware of the employer’s internal management guidelines, which provide that particularly violations of the restricted release date purchasing provisions is considered gross misconduct and results in automatic discharge.

#### **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 primary reason cited by the employer for discharging the claimant is his purchase of the restricted release date movies prior to the 8:00 a.m. open time on December 15, and secondarily that he was still “on the clock” when he made the purchase. Misconduct connotes volition or intent. Huntoon, supra. There is no evidence the claimant intentionally made the purchase after being told he could not; rather, when the claimant made the purchase, he had been told by a manager that if the register allowed the transaction to continue, it must be okay. He had no knowledge that if this advice was incorrect, it was grounds for automatic discharge. The register did allow the transaction to continue. As there were still registers open, presumably this was because there were still members of the public in the store who were not finished checking out; conceivably, a member of the public could also have purchased one of the same movies during the window of time between 12:00 a.m. and when the last register closed some time after 12:12 a.m.

While the purchase while “on the clock” was improper, there was no evidence presented to refute the claimant’s testimony that it was a common practice. Under the circumstances of this case, the claimant’s purchase at 12:12 a.m. on December 15 was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. 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 February 19, 2010 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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