

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SHAWNDA GREEN**

Claimant

**APPEAL NO: 20A-UI-01990-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**

Employer

**OC: 01/26/20**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 26, 2020, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 20, 2020 and continued on April 28, 2020. The claimant participated in the hearing with witness/Service and Engagement Team Lead Jake Barenthin. Executive Team Lead for Human Resources Janet Frasher and Executive Team Lead for Assets Protection Tyler Newell, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time guest advocate for Target from September 24, 2019 to January 18, 2020. She was discharged for taking items from the store without paying for them on five occasions.

On January 3, 2020, during transaction 3301 on terminal 82 Asset Protection Executive Team Lead Tyler Newell observed that the claimant had five clothing items that she did not present for payment at checkout. The clothing was determined to be worth \$53.54. On January 14, 2020, live surveillance showed the claimant making a purchase on terminal 79, transaction 3411. She purchased several items but left one package of Pure Leaf tea on the bottom rack of the cart and never presented it to the cashier to be rung up which resulted in a loss of \$5.99. On January 16, 2020, live surveillance showed the claimant on terminal 82, transaction 4604, purchasing various items but leaving one container of protein powder on the bottom rack of the cart. She initially had the protein powder in the child seat space of the cart and then moved it to the under cart. While in the checkout line, she looked at the item in the bottom of the cart before unloading her other merchandise onto the check-out lane belt. She did not purchase the protein powder resulting in a loss to the employer of \$24.99. On January 17, 2020, live surveillance of the claimant showed her making various grocery selections as well as two

packages of Lotrimin. She went to terminal 81 and while in line readjusted her merchandise with her coat in the child seat portion of the cart. She lifted her coat up, picked up the two packages of Lotrimin from the cart and put them under her coat in the child seat. The claimant purchased everything in her cart but the Lotrimin in transaction 6037 for a loss to the employer of \$19.98.

While reviewing the claimant's transactions the employer also found that on December 13, 2019, the claimant selected a container of Panera soup and a package of gummy snacks in transaction 6162, terminal 60. She scanned the gummy snacks and purchased those but failed to scan the soup. She bagged both items resulting in a loss to the employer of \$7.99.

On January 18, 2020, the employer interviewed the claimant and she admitted to not paying for the merchandise in question. The only disagreement the claimant voiced was stating she had generic Lotrimin but the packages matched the brand name not the generic. The employer asked the claimant if she could return the items and she said she would rather purchase them because she wanted to keep the merchandise. The employer told her she could not keep it and the total amount of merchandise taken was \$109.90. The employer notified the claimant her employment was terminated and she was escorted out of the store.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of the claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending appeal. The administrative record shows the claimant filed for and received a total of \$1,755.00 in unemployment insurance benefits for the 13 weeks ending April 25, 2020.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being

limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was experiencing some turmoil in her personal life and admitted to failing to pay for "tea, ointment, Panera soup, and clothes." She also took protein powder worth \$24.99. The claimant denies being a thief and it is conceivable she could have forgotten an item on the bottom of her cart on one occasion, but it is difficult to come to any other conclusion when she failed to scan and pay for the Panera soup, moved the protein powder from the child seat to the bottom of the cart before check-out, and covered the Lotrimin with her coat.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

As the claimant/appellant has been receiving benefits, pending a determination on her appeal, the next issue in this case is whether the claimant/appellant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

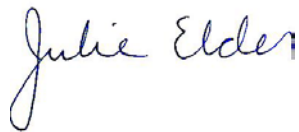
- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid unemployment insurance benefits in the amount of \$1,755.00 for the 13 weeks ending April 25, 2020.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The February 26, 2020, reference 04, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



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Julie Elder  
Administrative Law Judge

May 4, 2020  
Decision Dated and Mailed

je/scn