

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERMAN W ANDERSON
Claimant

APPEAL NO. 07A-UI-11329-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 11/11/07 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

Target Corporation filed a timely appeal from an unemployment insurance decision dated November 30, 2007, reference 01, that allowed benefits to Sherman W. Anderson. After due notice was issued, a telephone hearing was held December 28, 2007, with Mr. Anderson participating. Human Resources Team Lead Brianna Olson participated for the employer. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

Has the claimant been overpaid?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sherman W. Anderson was employed by Target Corporation from November 28, 2006, until he was discharged November 7, 2007. He was a team member in the logistics department, working overnight shifts.

The employer has a no-smoking policy that bans smoking on company property except in a designated area. On November 7, 2007, Mr. Anderson was observed by the store manager and by his supervisor preparing to smoke a cigarette in a no-smoking area in the store. Mr. Anderson was aware of the policy but thought, incorrectly, the smoking was authorized in the store on the overnight shifts because employees could not leave the building through the smoking area because of the mall's alarm system.

Mr. Anderson has received unemployment insurance benefits since filing a claim effective November 11, 2007.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

The evidence in the record establishes the existence of the no-smoking policy and Mr. Anderson's violation of that policy. Deliberate action contrary to the employer's interest is the essence of misconduct. Benefits must be withheld.

Mr. Anderson has received unemployment insurance benefits to which he is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated November 30, 2007, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. He has been overpaid \$735.00

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw