

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY D BOYLE

Claimant

APPEAL NO. 11A-UI-13718-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

OC: 09/18/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated October 7, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on November 17, 2011. Claimant participated personally. Participating as a witness for the claimant was Ms. Nicole Ott, Claimant's Cousin. Employer participated by Mr. Austin Moeller and Mr. Tim Carr.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Cory Boyle was employed by Target Corporation from October 14, 2008 until September 19, 2011 when he was discharged from employment.

A decision was made to terminate Mr. Boyle from his employment with Target Corporation after a female worker had complained to management that Mr. Boyle had engaged in inappropriate touching and inappropriate comments. The company investigated the allegations and a firsthand witness to the events had confirmed that the conduct had taken place. Claimant had engaged in giving unsolicited "backrubs" to the female worker and had at times unexpectedly grabbed the female worker in an attempt to "scare her." Mr. Boyle agreed that he had commented to the female worker, "Nice melons" as the worker carried melons held to her chest while stocking a company display case.

Because the claimant had been specifically warned about the same or similar conduct on February 17, 2011, a decision was made to terminate Mr. Boyle from his employment with Target Corporation.

It is the claimant's position that his statements and conduct towards the female employee had been "misinterpreted" by both the female worker and the company. It is claimant's further position that the female worker did not tell him to stop making comments or to stop touching her.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

Iowa Code § 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 employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter it is undisputed that Mr. Boyle had made comments to a female worker such as "Those are nice melons" and had stated "while you're down there" when the female worker was on her knees performing work duties. The testimony is also undisputed that the claimant had provided unsolicited "backrubs" and had repeatedly grabbed the female worker while attempting to "scare her." Claimant maintains that his statements and his conduct were innocent and had been misinterpreted by the company.

In view of the specific warning that had been given to Mr. Boyle on February 17, 2011, the claimant knew or should have known that conduct of this nature was not only unacceptable in the work place but that it also jeopardized his continuing employment with Target Corporation. The female worker did not believe Mr. Boyle's conduct to be innocent, as she reported it to company management in the form of a complaint saying she had told Mr. Boyle in the past to stop that type of conduct. The claimant's witness who had been present during the "Nice melons" incident agreed that the statement could be easily misinterpreted and that it had a sexual connotation.

For the reasons stated herein, the administrative law judge concludes that the claimant's ongoing conduct of touching and making statements with sexual connotations after being warned showed a willful disregard for the employer's interests and standards of behavior and thus was disqualifying conduct under the provisions of the Employment Security Law. Benefits are withheld.

DECISION:

The representative's decision dated October 7, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs