

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AHMIKO V WASHINGTON
Claimant

APPEAL NO. 09A-UI-09537-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 05/24/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ahmiko Washington, filed an appeal from a decision dated June 25, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 20, 2009. The claimant participated on his own behalf. The employer, Target, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Ahmiko Washington was employed by Target from February 28, 2003 until May 21, 2009, as a full-time warehouse worker. On March 12, 2009, he was arrested by the local police department on a weapons charge and possession of marijuana. He did not notify the employer of the arrest but the arrest was published in the newspaper and on March 17, 2009, Human Resources Manager Teresa Charlie questioned him about the matter.

Mr. Washington stated he did have a pistol in the console of the vehicle he was driving. The weapon was registered and he asserted he had been coming back from the shooting range and had failed to unload the pistol. The police searched the car and found two marijuana cigarettes in the ashtray. The claimant asserted it was his girlfriend's vehicle and he did not know the marijuana was there.

The employer gave him an eight-week suspension to resolve the charges against him, to be found guilty or plead guilty, or have the charges dropped or reduced. The first court date the claimant could get for a "speedy trial" was May 28, 2009. But the eight-week suspension ended May 21, 2009, and Ms. Charlie notified him by phone he was discharged.

REASONING AND CONCLUSIONS OF LAW:

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, 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 misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988).

The employer discharged the claimant only because the eight-week suspension ended before the criminal charges against him could be resolved. It presented no independent testimony or evidence of the claimant's guilt or how it related to his employment. It has failed to meet the burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of June 25, 2009, reference 01, is reversed. Ahmiko Washington is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css