

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE M BURKS

Claimant

APPEAL NO: 14A-UI-10530-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

OC: 08/31/14

Claimant: Appellant (2)

Iowa Code 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 2, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the November 13 hearing with her attorney, Luke Guthrie. Brent Knutson, the human resource business partner, and Andy Young, a group leader, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2005. She worked as a full time warehouse employee. The employer's disciplinary policy informs employees they will be discharged if they receive four written warnings in a rolling calendar year.

The claimant received a written warning on November 2, 2013 for committing an unsafe act. She accidentally ran into a pole with a forklift. On June 2, 2014, the claimant received a written warning for using her cell phone during work hours which is a violation of the employer's rules. The claimant received her third written warning on July 27, 2014. After the claimant received the third written warning she knew her job was in jeopardy.

On August 23, Young and Ferry, both group leaders, concluded the claimant failed to properly complete an equipment checklist by failing to initial that she had operated some equipment. Young and Ferry met with the claimant in a seek to understand counseling meeting. Young wanted to find out why she had not properly completed the paperwork. If the claimant understood the procedure for completing the paperwork, the employer could give her a written warning.

At the counseling session, the claimant told the employer she had not operated the equipment. If she did not operate the equipment, she was not required to complete the checklist. The claimant understood an employee, who worked with her, told the employer the claimant had not operated the equipment. The employer told the claimant she had been seen operating the equipment and was required to complete the equipment checklist. The claimant became upset during this meeting because she knew her job was in jeopardy. As the claimant left because she was upset, she made a comment that this was ridiculous. Ferry approached the claimant and told her that he and Young heard her say this is bullshit. The claimant denied she made that comment. Even though Ferry asked the claimant to return to the counseling session, the claimant was very emotional and told him she wanted to go back to work. Ferry allowed her to do this.

After the claimant returned to her job, she could not stop crying. She then asked to leave work early because she concluded it was not safe for her to work when she was so emotionally upset. The employer allowed her to leave work early. On September 1, the employer sent the claimant a letter informing her she was discharged because of her continued unacceptable conduct. The employer considered the claimant to have violated the employer's code of conduct on August 23 by being disrespectful to Young and Ferry.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

Based on the employer's disciplinary policy, the employer established business reasons for discharging the claimant on September 1, 2014. The claimant had received three written warning prior to August 23, but she had not received any for violating the employer's code of

conduct or for being disrespectful to another employee. Even though the employer asserted the claimant failed to properly complete paperwork, she was only required to complete the paperwork if she operated the equipment. The claimant's comment that this is ridiculous or even that this is bullshit does not rise to the level of work-connected misconduct. The claimant was frustrated and momentarily lost her composure. This isolated comment or incident does not rise to the level of work-connected misconduct. As of August 31, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's October 2, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 31, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs