

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER M STEIES
Claimant

APPEAL NO. 09A-UI-00939-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 12/21/08 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Final, Current Act of Misconduct

STATEMENT OF THE CASE:

Christopher M. Steies filed a timely appeal from an unemployment insurance decision dated January 13, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held February 3, 2009 with Mr. Steies participating and presenting additional testimony by Alex Fortfch. Human Resources Business Partner Amy Mosley participated for the employer, Target Corporation.

ISSUE:

Was the claimant discharged for a current act of misconduct?

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: Christopher M. Steies was employed by Target Corporation from September 6, 2005 until he was discharged December 22, 2008. He last was employed as a warehouse worker.

The final incident that led to his discharge occurred on December 14, 2008. As a prank, Mr. Steies called to report that a trailer needed to be closed. Mr. Steies knew at the time that there was no trailer at the particular bay. Prank calls such as this occurred from time to time at the work place. No one had ever been disciplined for making such calls in the past. Mr. Steies made no more calls after being told not to do so by his supervisor. He was discharged eight days later because of this event and because of a warning he had received in August 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The evidence establishes that eight days elapsed from the final incident until the date of discharge. Even more significantly, the employer could give no examples of other people being disciplined for the specific act. The claimant and his witness testified without contradiction that prank calls such as the final incident were a normal part of the work routine.

The administrative law judge concludes from this evidence that the claimant had no way of knowing that the prank call would lead to his discharge. The administrative law judge concludes that the final incident leading to discharge was not a current act and was not willful misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated January 13, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs