

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DIANE L BURGGRAF
305 WATER ST
SUMNER IA 50674

TARGET
c/o TALX UC EXPRESS
PO BOX 66749
ST LOUIS MO 63166-6749

Appeal Number: 04A-UI-00627-CT
OC: 11/23/03 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Diane Burggraf filed an appeal from a representative's decision dated January 14, 2004, reference 01, which denied benefits based on her separation from Target. After due notice was issued, a hearing was held by telephone on February 9, 2004. Ms. Burggraf participated personally. The employer participated by Kristie Schreck, Human Resources Group Leader.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Burggraf began working for Target on March 18, 2003. She worked Saturdays, Sundays, and Mondays as a packer in distribution. Her last day at work was May 4. She called on May 5 to report that she would be absent because her husband had hit a deer with his car. Her husband's car could not be driven and, therefore, he used the car Ms. Burggraf would have used to get to and from work.

Ms. Burggraf was absent from her next scheduled work on May 10, 11, and 12 due to illness. On May 17, she left an answering machine message that she would not be in for the three shifts that weekend because she was attending graduation activities. She did not speak with anyone concerning her intended absences. Work had been slow and individuals had been given the opportunity to leave early when there was no work. Ms. Burggraf had not been advised that there would be no work the weekend of May 17 or that work was so slow that she could take whatever time off she wanted. The employer met with her on May 20 and discharged her for unacceptable attendance during the 90-day probationary period.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Burggraf was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

Ms. Burggraf missed seven days of work during a period of employment which lasted approximately eight weeks. The three days she missed due to illness are considered excused as they were for reasonable cause. Her absence of May 5 is unexcused as it was due to a matter of purely personal responsibility, transportation. Her absences of May 17, 18, and 19 are unexcused as they were for personal reasons, attendance at graduation events. The administrative law judge appreciates that work was slow. However, the administrative law judge is not inclined to believe that the employer would permit employees to simply take off whatever time they chose, without first speaking with a supervisor, because of the work slow-down. If every employee decided to leave answering machine messages that they were not coming to work, the employer would have no one to handle production. When Ms. Burggraf called in on May 17, she had not been to work since May 5. She did not speak with a supervisor when she called on May 17. Therefore, she had no way of knowing the extent to which work might be available that weekend. Her conduct in simply leaving an answering machine message that she would not be at work for three days because of graduation activities constituted a substantial disregard of the employer's standards.

It is true that Ms. Burggraf had not been warned that her job was in jeopardy because of her attendance. However, she had not been to work since May 5. Therefore, the employer had not had an opportunity to address the issue with her. Given that she was still a probationary employee, she knew or should have known that taking three consecutive days off for personal reasons without speaking with a supervisor was contrary to the employer's interests. For the

reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

DECISION:

The representative's decision dated January 14, 2004, reference 01, is hereby affirmed. Ms. Burggraf was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/kjf