

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL M ROSTECK
Claimant

APPEAL NO. 08A-UI-01230-NT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

TARGET CORPORATION
Employer

**OC: 02/04/07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 25, 2008, reference 04, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 19, 2008. The claimant participated personally. The employer participated by Ahnna Reicks and Timber Dall.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the records, finds: The claimant worked for this employer from May 18, 2007, until December 24, 2007, when he was discharged for a violation of company policy. Mr. Rosteck held the position of full-time outbound warehouse worker and was paid by the hour.

Mr. Rosteck was discharged after an investigation showed the claimant repeatedly intentionally damaging and destroying company property while he loaded trucks for outbound delivery to Target stores from their warehouse facility. The company initially believed that Mr. Rosteck may have been pilfering some items; however, video surveillance could not establish any misappropriation on the part of the claimant.

The claimant agrees that he repeatedly damaged company products due to "frustration." The claimant denies misappropriating company property.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged for intentional disqualifying misconduct. It does.

The evidence in the record establishes that Mr. Rosteck was observed on a number of occasions intentionally kicking, throwing, and otherwise intentionally damaging company products as he loaded them onto outbound trailers for delivery to Target stores. During the hearing in this matter, Mr. Rosteck agreed that he had intentionally violated company policy by damaging company property but could supply no good reason for doing so.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged for intentional disqualifying misconduct. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$2,290.00.

DECISION:

The representative's decision dated January 25, 2008, reference 04, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$2,290.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw/kjw