

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIARA S DRAISEY
Claimant

TARGET CORPORATION
Employer

APPEAL 23A-UI-07837-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/02/23
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the August 1, 2023, (reference 01) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 29, 2023. Claimant Tiara Draisey participated and testified. Employer Target Corporation participated through executive team leader of human resources Bryan Gamboa. Ashely Osborne observed on employer's behalf. Employer's Exhibits 1 and 2 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a general merchandise expert from November 2, 2021, and was separated from employment on July 3, 2023, when she was discharged.

Employer maintains a policy prohibiting team leaders from dating or having romantic or intimate relationships with team members they directly supervise. The policy provides it is the leader's responsibility to report the relationship if one develops so that one of the two can transfer to a different position or choose to or be asked to resign if a transfer is not available. (Exhibit 1). Claimant was aware of the policy. (Exhibit 2).

On or around June 20, 2023, employer became aware of a video recorded by a team member. The video showed claimant and her direct leader hugging and kissing in a parking lot. The video was recorded off work premises and outside work hours. Claimant and her direct lead were friends and claimant was confiding in him about some personal issues she was having.

After having a few drinks, she kissed him. Claimant and her direct lead were not in a relationship. When employer learned of the video it initiated an investigation.

On June 20, 2023, human resources spoke to claimant and asked her if there was anything she needed to let them know about any relationships with other employees at Target. Claimant was confused by this line of questioning because she was not in a relationship with any employee and told human resources there was nothing she needed to report. Employer did not tell claimant about the video or provide any details about why it was questioning her. After the meeting, claimant learned about the video from the direct lead and from other team members who had seen the video. On June 22, 2023, claimant spoke to human resources and explained she understood why she was asked the earlier questions after learning of the video. She became emotional because she was upset about her personal problems and the incident. She admitted to kissing her direct lead, but stated they were not in a relationship and the incident was a one-time event resulting from poor judgment on claimant's part. Human resources discussed moving claimant to a different department when she returned from vacation the following week, and claimant agreed to a transfer.

When claimant returned to work on July 3, 2023, after a one-week vacation, she began working in the new department. That same day, employer discharged her for violating its policy on dating employees.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,278.00, since filing a claim with an effective date of July 2, 2023, for the three weeks ending July 22, 2023. Employer did not participate in the fact-finding interview because it did not answer the fact-finder's call on the date of the interview or respond to the fact-finder's voicemail. (Fact-finding documents).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

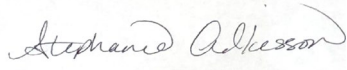
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, claimant was discharged for violating a policy prohibiting team leaders from dating subordinates. Nothing in the policy provides that the subordinate would be disciplined for any such relationship. Rather, the policy indicates that upon report of the relationship one person would be transferred to another department where feasible. Claimant's credible testimony was that she was not in a relationship with the direct leader. However, even if claimant was in a relationship with a direct leader, claimant was not on notice that her conduct violated a policy as she was not the leader. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Because claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

DECISION:

The August 1, 2023, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.



Stephanie Adkisson
Administrative Law Judge

August 30, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.