

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA A HUTCHINS
Claimant

APPEAL NO: 19A-UI-04117-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

OC: 04/21/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Pamela A Hutchins, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated May 10, 2019, (reference 01) which held claimant ineligible for unemployment insurance benefits, finding that she was discharged from work on April 24, 2019 for violation of a known company rule. After due notice was provided, a telephone hearing was held on June 13, 2019. Claimant participated. Employer participated by Ms. Sophia Corpstein, Executive team leader of Human Resources and Ms. Sydney Kroska, Executive team leader of Special Sales. Employer's Exhibits A, B and C and Department Exhibit D-1, the administrative file were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having considered all of the evidence in the record, the administrative law judge finds: Pamela A. Hutchins was employed by Target Corporation from May 20, 2018 until April 24, 2019, when she was discharged from employment. Ms. Hutchins worked as a full-time apparel and accessory department team leader and was paid by the hour. Claimant's immediate supervisor was Ms. Sydney Kroska.

Ms. Hutchins was discharged after she violated the terms of a final written warning that had been given to her regarding working before or after scheduled work hours without the specific authorization of a supervisor or manager and she had reported fewer hours than she had worked and failing to report extra time work.

March 25, 2019, Ms. Hutchins had entered a punch correction on her time reporting indicating that she had left work at 5:17 p.m. Because the punch correction entered by Ms. Hutchins made it appear that she had not completed her work shift that day, the employer investigated. The employer determined that Ms. Hutchins had actually left work on March 25, 2019 at 8:51 p.m. but the claimant had not recorded the actual time worked on her time reporting document

so that it would not appear that she had worked over 40 hours during the pay period. Employees who work more than 40 hours during the pay period are required to obtain permission from their supervisors or a manager before doing so, and employees are instructed not to work any over-time unless pre-authorized.

Because the claimant's mis-reporting of her actual working hours had resulted in the claimant performing services for the employer without being paid, the employer was concerned for that reason, and also because claimant's action had jeopardized the company with a potential violation of the wage and hour act by allowing a worker to perform services without being paid.

Ms. Hutchins had previously received a final written warning on March 22, 2019, after Ms. Hutchins admitted changing her reported hours to make it appear she had worked 40 or few hours that week warning her to use the company's time recording procedures accurately and honestly and it also warned the claimant not to use punch corrections to inaccurately portray the true number of hours that she had worked during the pay period. The warning concluded that future violations of the rule within a 12-month flowing period would result in the claimant's immediate termination from employment.

It is the claimant's position that other duties required of her as a team leader in the department conflicted with the company rule prohibiting working beyond 40 hours per week. The claimant believed that if she did not clean up the sales area before leaving at the end of her shift, her failure to do so would result in poor evaluation of her work and might lead to disciplinary action for that reason in the future.

The employer had addressed Ms. Hutchins concerns about completing all aspects of her work within the time allotted by instructing Ms. Hutchins at the time of the warning to partner with other sales leaders or staff to accomplish work goals, if it appeared that she would be unable to complete her duties within the time allotted. The employer emphasized that inaccurate time punches in the future, working beyond the authorized time limits or falsifying her time during the next 12 months, would result in Ms. Hutchins termination from employment.

When Ms. Hutchins reported on April 22, 2019 that she had altered her time reporting by changing the key punches to reflect that she had worked fewer hours than she had actually worked, the company investigated and determined that Ms. Hutchins had again violated not only company policy but also the final warning that had been served upon her by the employer in March, 2019 and the claimant was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for work-connected misconduct sufficient to warrant the denial of job insurance benefits. It does.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

A warning weighs heavily towards a finding of intentional conduct. Willful misconduct can be established when an employee's disobeys a reasonable work directive that had previously been a subject of a disciplinary action given to the employee. *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1985). Repeated failure to follow employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

In this case, claimant was a team leader in the sales department for Target Corporation. Among the claimant's duties she felt an obligation to tidy up the sales area before concluding her work at the end of each work shift. Ms. Hutchins was aware that the company has a strict rule prohibiting employees from working over-time without a specific advanced approval of a manager or supervisor. When the employer determined that Ms. Hutchins was working more than 40 hours, staying over to tidy the department but claiming fewer working hours, the employer acted reasonably in issuing Ms. Hutchins a strict final written warning prohibiting her from mis-reporting her working hours in the future and emphasizing that if she violated the terms of the warning, she would be terminated from employment. The employer had also addressed Ms. Hutchins concerns that failing to tidy up the work area might be viewed as poor performance by the company. The employer emphasized the requirement that the claimant

accurately report her work hours in the future, suggesting reasonable alternatives to Ms. Hutchins by suggesting that the claimant seek the assistance of other workers by getting tidying up responsibilities. When Ms. Hutchins informed the employer that she again under-reported her hours after being specifically warned not to do so, she was discharged from employment.

Although sympathetic to Ms. Hutchins situation, the administrative law judge nevertheless concludes that the employer has sustained its burden of proof establishing that the claimant's actions constituted work-connected misconduct sufficient to warrant the denial of benefits. Benefits are denied.

DECISION:

The representative's unemployment insurance decision dated May 10, 2019, reference 01 is affirmed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn