

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN W POWEL

Claimant

APPEAL NO. 14A-UI-11158-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION

Employer

OC: 10/05/14

Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 23, 2014, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account may be charged. After due notice was issued, a hearing was held on November 17, 2014. Claimant Brian Powell participated. Stephanie Staack represented the employer and presented additional testimony through Bret Houston. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two and Three into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Powell was employed by Target Corporation as a distribution center inventory management tech from 2011 until August 1, 2014, when the employer discharged him from the employment. Mr. Powell was responsible for day-to-day inventory management of frozen food items. His duties involved pulling expired inventory, dealing with damaged product, and handling calls from the employer's operations staff. The employer's computer system contained a date by which each product was to leave the distribution facility for one or more of the employer's retail stores. Some of the dates were assigned by the computer system. Other dates came from the physical markings on the packaged materials. These were not sell-by dates. Instead, they were dates by which the employer deemed it necessary to move the product to retail stores so that the product would have a reasonable shelf life once it reached the retail store. Mr. Powell was allowed to bypass the deadline date assigned to the product. However, if he did that he was required to notify his supervisor and to take additional necessary steps to share appropriate information with staff in other areas further along the distribution chain.

The conduct that triggered the discharge came to the attention of Mr. Powell's immediate supervisor, Bret Houston, on July 30, 2014. At that time, Mr. Houston learned that Mr. Powell had made minor changes to the distribution deadline dates for three products so that they could be sent from the distribution center. Mr. Powell had neglected to notify Mr. Houston of the changes and had neglected to pass the information along to staff in other areas further along the distribution chain.

In making the decision to discharge Mr. Powell from the employment, Ms. Houston considered a conversation he had had with Mr. Powell in March 2014 after a store had received expired product.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes negligence on the part of Mr. Powell in connection with the final incident that triggered the discharge, but not an intentional or willful disregard of the employer’s policies. Mr. Powell had made minor changes to three deadline dates, but had neglected to pass that information along to Mr. Houston or to other parts of the distribution chain. Mr. Powell did not think the changes significant and was motivated by a desire to move product from the employer’s facility. There is no indication that Mr. Powell made a conscious decision not to inform Mr. Houston or others of the changes. There is no indication that Mr. Powell’s conduct in any way affected the safety of the items in question. Absent an indication of a willful or wanton disregard of the employer’s interests or a pattern of carelessness and/or negligence indicating the same, the administrative law judge concludes that Mr. Powell’s conduct did not rise to the level of substantial misconduct in connection with the employer that would disqualify him for benefits. Mr. Powell was discharged for no disqualifying reason. Accordingly, Mr. Powell is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The claims deputy’s October 23, 2014, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs

