

**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**

**ASHLEA B WARRICK
3525 'E' AVE NW #2
CEDAR RAPIDS IA 52405**

**NORDSTROM INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-05217-HT
OC: 04/17/05 R: 03
Claimant: Respondent (2)**

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
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Nordstrom, filed an appeal from a decision dated May 4, 2005, reference 01. The decision allowed benefits to the claimant, Ashlea Warrick. After due notice was issued a hearing was held by telephone conference call on June 15, 2005. The claimant participated on her own behalf. The employer participated by Team Lead Michelle Ott and Human Resources Manager Robin Pospisil Sand was represented by TALX in the person of Peg Heenan

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ashlea Warrick was employed by Nordstrom from May 10, 2004 until April 19, 2005. She was a full-time personal shopper. At the time of hire she received a copy of the employee handbook which set out the attendance policies and progressive disciplinary procedures. Employees are assessed points for various attendance occurrences and may be discharged when eight points have been accumulated. One point will drop off the total if an employee has one month of perfect attendance.

On January 4, 2005, the claimant had accumulated a total of 9.75 points. Her team leader, Michelle Ott, had not given her the required warnings when she had accumulated six and seven points, so she was not discharged at that time. However, Ms. Ott and Human Resources Manager Robin Pospisil, did warn her that she would be discharged if there were any further occurrences.

Ms. Warrick had perfect attendance for February and March, and her total was 7.75 as of the first of April. On April 18, 2005, she left for 39 minutes so she could take her boyfriend's cell phone to have more minutes added to it. She had told Team Leader Mitch Zmolek she was going to leave and he said if she did she would accumulate one-quarter point. This put her at a total of eight points and she was discharged the next day by Ms. Ott and Ms. Pospisil.

Ashlea Warrick has received unemployment benefits since filing a claim with an effective date of April 17, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised her job was in jeopardy as a result of her attendance points.. In spite of the warning she left on a personal errand for her boyfriend, even after being advised this would cause her to accumulate another quarter point. There was no emergency involved, merely a personal errand for someone else. This cannot be considered leaving her shift for good cause and constitutes another unexcused absence. In conjunction with the previous warnings this is excessive absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 4, 2005, reference 01, is reversed. Ashlea Warrick is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,075.00.

bgh/pjs