

**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**

**KRISTINA L NAYLOR
908 – 1ST AVE S #307
FORT DODGE IA 50501**

**FASTWAY STORES
1501 – 42ND ST #230
WEST DES MOINES IA 50266-1005**

**Appeal Number: 04A-UI-02770-CT
OC: 01/25/04 R: 01
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 of Misconduct

STATEMENT OF THE CASE:

Fastway Stores filed an appeal from a representative's decision dated March 3, 2004, reference 02, which held that no disqualification would be imposed regarding Kristina Naylor's separation from employment. After due notice was issued, a hearing was held by telephone on April 1, 2004. The employer participated by Terri Brundage, Manager. Exhibits One through Five were admitted on the employer's behalf. Ms. Naylor did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Naylor was employed by Fastway Stores from August 30, 2003 until January 19, 2004 as a full-time cashier. She was discharged for repeatedly leaving work early without permission after being warned.

On November 26, 2003, Ms. Naylor was advised in writing that she would need to find someone to work her shift if she could not remain at work for the duration of her shift. On December 3, she received a written warning, which advised that she was to report to work prepared to remain for the entire shift. Ms. Naylor left work two hours early on December 22, 45 minutes early on December 26, and four hours early on December 27. She did not have permission to leave early and did not find a replacement on any of the three dates. Ms. Naylor was late and also left early on January 11. On January 15, she left work approximately 45 minutes early. She did not have permission to leave and did not find a replacement on either January 11 or January 15. The decision to discharge was based on the fact that she left work 36 minutes early on January 19 without permission. As a result, she was discharged from the employment.

Ms. Naylor has received a total of \$1,413.00 in job insurance benefits since filing her claim effective January 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Naylor was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Naylor was discharged for leaving work early without permission and without finding a replacement to work her shift. She had been warned both verbally and in writing that she was to remain at work for her entire shift. In spite of the warnings, she continued to leave work without permission and without finding a replacement.

The employer scheduled workers so that the needs of the store would be met. The ability to handle the workload and customer needs could be compromised if scheduled employees simply left without arranging coverage for their jobs. Ms. Naylor was aware of the employer's expectations regarding completing her shift but chose to disregard those standards. She did not participate in the hearing to establish that her leaving early was due to emergency situations, which prevented her from seeking permission to leave, or prevented her from contacting a replacement. Her continued failure to adhere to the employer's standards constituted a substantial disregard of the employer's interests. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Naylor has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code Section 96.3(7).

DECISION:

The representative's decision dated March 3, 2004, reference 02, is hereby reversed. Ms. Naylor was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Naylor has been overpaid \$1,413.00 in job insurance benefits.

cfc/kjf