

**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**

**JESSICA L BURCK  
630 – 3<sup>RD</sup> ST  
UNDERWOOD IA 51576**

**K-MART CORPORATION  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-03370-CT  
OC: 02/22/04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

K-Mart Corporation filed an appeal from a representative's decision dated March 17, 2004, reference 01, which held that no disqualification would be imposed regarding Jessica Burck's separation from employment. After due notice was issued, a hearing was held by telephone on April 15, 2004. Ms. Burck participated personally. The employer participated by Kathy Genrich, Store Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Burck was employed by K-Mart from June 2, 2002 until December 11, 2003. She worked part-time in the pharmacy and as a cashier. She was discharged because of her attendance.

Ms. Burck received a written warning on February 1, 2003 because she had been absent without calling in on January 29. She received a written warning on June 5, 2003 because she had been late nine times and had two unreported absences. On October 6, Ms. Burck received another written warning. She had been late 22 times since the June 5 warning. Ms. Burck was placed on probation on October 28 because of continuing attendance problems. She was then late on November 9 and November 22. On December 9, she failed to report that she would be absent. When she reported to work late on December 10, the decision was made to discharge her. Ms. Burck was notified of the discharge on December 11, 2003.

Ms. Burck has received a total of \$728.00 in job insurance benefits since filing her claim effective February 22, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Burck 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. Burck was discharged for repeated tardiness after being warned. She had been late at least nine times prior to the warning of June 5, 2003. In spite of the warning, she was late an additional 22 times before being warned again on October 6. Even after she was placed on probation, she continued to report to work late. She was late three times after being placed on probation. The decision to discharge on December 11 was based on the fact that she was again late on December 10.

Ms. Burck had ample notice that her tardiness was jeopardizing her continued employment with K-mart. In spite of the warnings, she did not take those steps necessary to ensure her timely arrival at work. The evidence of record does not establish any reasonable cause for the repeated tardiness. The occasions of tardiness identified herein are more than sufficient to establish a substantial disregard for the employer's standards. For the reasons cited herein, it is concluded that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

Ms. Burck 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 17, 2004, reference 01, is hereby reversed. Ms. Burck 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. Burck has been overpaid \$728.00 in job insurance benefits.

cfc/kjf