

**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**

**DANA L WHITE
1100 MARSHALL AVE #12-A
COUNCIL BLUFFS IA 51503**

**WALGREEN COMPANY
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08716-CT
OC: 07/18/04 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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Walgreen Company filed an appeal from a representative's decision dated August 6, 2004, reference 01, which held that no disqualification would be imposed regarding Dana White's separation from employment. After due notice was issued, a hearing was held by telephone on September 2, 2004. The employer participated by Tony Kresnik, Store Manager, and Mark Wilmore, Assistant Manager. The employer was represented by Doretha Washington of Talx UC express. Ms. White did not respond to the notice of hearing.

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. White was employed by Walgreen Company from June 13, 2002 until April 29, 2004. On April 25, 2004, she transferred to her final location and was working full time as a camera clerk. Ms. White left during a lunch break on April 27 but did not return to complete her shift. She did not contact the employer to advise that she would not be returning.

Ms. White was scheduled to work on April 28 but did not report for work or contact the employer. She came to the workplace on April 29 and spoke to the manager. She explained that she failed to return to work on April 27 because she had experienced a flat tire. She indicated that she had been too busy to call the employer. She indicated that she had not reported to work on April 28 because she was attending to the flat tire and did not have time to contact the employer. The employer advised Ms. White on April 29 that she no longer had employment because she was presumed to have voluntarily quit.

Ms. White has received a total of \$870.00 in job insurance benefits since filing her claim effective July 18, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. White was separated from employment for any disqualifying reason. The administrative law judge cannot conclude that she voluntarily quit her employment in light of her return to the employer on April 29. There was no evidence that she intended to sever her employment relationship. The administrative law judge concludes that the employer initiated the separation when Ms. White was not allowed to return to work on April 29. Therefore, the separation shall be considered a discharge.

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. White was discharged because of her absences of April 27 and 28. The administrative law judge does not believe that she would have had no opportunity to contact the employer the evening of April 27 when she experienced a flat tire during her lunch break. Nor is it believed that she could find no opportunity to contact the employer on April 28 to report her absence. Ms. White knew or should have known that unreported absences were contrary to the type of behavior the employer expected. Her conduct constituted a substantial disregard of the employer's standards and is disqualifying misconduct even without the benefit of prior warnings.

For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Ms. White 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 August 6, 2004, reference 01, is hereby reversed. Ms. White 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. White has been overpaid \$870.00 in job insurance benefits.

cfc/kjf