

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STACY A STANLEY**  
Claimant

**APPEAL NO. 11A-UI-08362-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALGREEN COMPANY**  
Employer

**OC: 05/22/11  
Claimant: Respondent (2-R)**

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 June 17, 2011, reference 01, which held that no disqualification would be imposed regarding Stacy Stanley's separation from employment. After due notice was issued, a hearing was held by telephone on July 19, 2011. The employer participated by Ron Frank, Store Manager, and was represented by Craig Cree of Talx Corporation. Ms. Stanley responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

**ISSUE:**

At issue in this matter is whether Ms. Stanley was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Stanley was employed by Walgreen Company from May of 2006 until May 27, 2011. She was last employed full time as a photo clerk. She was discharged for repeated tardiness in reporting to work.

Employees are expected to report absences before the start of the shift. Ms. Stanley was scheduled to be at work at 7:00 a.m. on August 17, 2010. She called at 2:30 p.m. to report that she would be absent because she was in jail. She received a written warning on August 18. She was scheduled to be at work at 7:00 a.m. on November 11, 2010 but did not arrive until 8:51 a.m. because she overslept. She was given another written warning that day. Ms. Stanley was 15 minutes late because she overslept on November 24 and received another written warning regarding attendance.

Ms. Stanley was 2.5 hours late on March 30, 2011 because she again overslept. She received a written warning on March 30. The final incident that prompted the discharge occurred on May 27. She called at 8:00 a.m., an hour after the start of her shift. She believed she was scheduled to be at work at 8:00 and called to report that she would be late. By the time she

arrived at work, she was an hour and 25 minutes late. As a result, she was discharged. Attendance was the sole reason for the separation.

Ms. Stanley filed a claim for job insurance benefits effective May 22, 2011. She has received a total of \$1,131.00 in benefits since filing the claim.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Ms. Stanley accumulated five periods of unexcused absenteeism. Four of the occasions were due to oversleeping and one was due to being in jail. An absence is not excused if it is due to oversleeping or to matters of personal responsibility, such as incarceration. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. Stanley received four written warnings advising her that her continued employment was in jeopardy because of her repeated tardiness. In spite of the warnings, she continued to miss work due to tardiness. With the exception of November 25 when she was 15 minutes late, all of the tardiness was by over one hour.

After her initial warning regarding attendance on August 18, 2010, Ms. Stanley was late four times within a period of approximately six months. The administrative law judge considers this excessive, especially in light of the extent of the tardiness. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. It is concluded, therefore, that disqualifying misconduct has been established. As such benefits are denied.

Ms. Stanley has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code § 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

**DECISION:**

The representative's decision dated June 17, 2011, reference 01, is hereby reversed. Ms. Stanley was discharged by Walgreen Company for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Stanley will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs