

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

MARC E RICHARDSON
1516 – 44TH ST
ROCK ISLAND IL 61201

ALLIED WASTE NORTH AMERICA INC
C/O ADP UCM TALX
PO BOX 66744
ST LOUIS MO 63166-6864

Appeal Number: 04A-UI-04851-DWT
OC 04/04/04 R 12
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 are 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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Allied Waste North America, Inc. (employer) appealed a representative's April 16, 2004 decision that concluded Marc E. Richardson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 20, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Tim Sipes, Ladd Tucker and Doug Collins appeared on the employer's behalf.

After the hearing had closed and the employer had been excused, the claimant contacted the Appeals Section. The claimant made a request to reopen the hearing. Based on the claimant's

request to reopen the hearing, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 15, 2003. He worked as a full-time residential driver. Tucker was the claimant's supervisor. The claimant received a copy of the employer's written attendance policy. The policy informed employees that the employer considers an employee to be excessively absent from work when an employee has more than five unexcused absences in a calendar year. The employer also requires an employee to contact his supervisor an hour before a scheduled shift when the employee is unable to work as scheduled. When the claimant worked for the employer he was absent 18 days.

In October or November the employer told the claimant he was missing too much work and had to improve his attendance. On December 8, 2003, the employer gave the claimant a written warning because he had left a message on the employer's overnight answering machine instead of talking to his supervisor to report he was ill and unable to work as scheduled. The written warning told the claimant that if there were any further problems of this nature, he could be discharged.

The claimant did not report to work or call the employer on December 24, 26, 27, 29 and 30. The employer told the claimant on December 31 he was discharged for excessive unexcused absenteeism.

The claimant established a claim for unemployment insurance benefits during the week of April 4, 2004. He filed claims for the weeks ending April 10 through May 8, 2004. He received a total of \$1,785.00 in benefits for these weeks.

The claimant received the hearing notice informing him that a hearing was scheduled on May 20 at 9:00 a.m. The claimant noticed the time and date of the hearing, but he did not read the instructions on the hearing notice. The claimant did not read the hearing instructions until after 9:00 a.m. on May 20 when he did not receive a call. The claimant called the Appeals Section about 9:25 a.m. By the time the claimant called, the hearing had been closed and the employer had been excused. The claimant made a request to reopen the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant received the hearing notice prior to the May 20 scheduled hearing. The claimant did not read or follow the hearing instructions. The first time the claimant contacted the Appeals Section for the May 20 hearing was after the hearing had been closed and the employer had been excused from the hearing. The claimant did not establish good cause to reopen the hearing.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy for being excessively absent from work for unexcused reasons on December 8, 2003. Even though the employer gave the claimant a warning for failing to personally contact his supervisor an hour before his shift started, the claimant again failed to contact his supervisor on December 24, 26, 27, 29 and 30 and report he was unable to work as scheduled. The facts do not establish the claimant's absence these days was excused. Also, the claimant failed to properly report his absence to his supervisor. The claimant's repeated failure to work as scheduled and to properly notify his supervisor about his absences amounts to an intentional disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending April 10 through May 8. He has been overpaid a total of \$1,785.00 in benefits for these weeks.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's April 16, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 4, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending April 10 through May 8, 2004. He has been overpaid a total of \$1,785.00 in benefits these weeks.

dlw/kjf