

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

MARTIN ARIAS
823 – 3RD AVE #B
COUNCIL BLUFFS IA 51501

RED WHEEL FUNDRAISING
16 S 15TH ST
COUNCIL BLUFFS IA 51501

Appeal Number: 05A-UI-07161-CT
OC: 05/01/05 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(3)a – Recall to Suitable Work
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Red Wheel Fundraising filed an appeal from a representative's decision dated July 7, 2005, reference 03, which held that no disqualification would be imposed regarding Martin Arias' refusal of recall. After due notice was issued, a hearing was held by telephone on July 29, 2005. The employer participated by Mike Reineke, Plant Manager. Mr. Arias 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: Mr. Arias began working for Red Wheel Fundraising on October 12, 2004 as a full-time sanitation worker. He was working full time as a supervisor when laid off on May 5, 2005. At the time of layoff, he was given written instructions to return to work on June 6 at 10:00 a.m. On June 3, the plant manager contacted Mr. Arias by telephone to remind him that he was to return the following Monday. Mr. Arias agreed that he would return as scheduled.

Mr. Arias did not report for work or contact the employer on June 6 or June 7. The employer was unable to reach him by telephone. On June 8, he turned in his keys and notified the employer that he had found work elsewhere. If he had returned on June 6, he would have returned to the same job for the same rate of pay and same number of hours he had been working prior to the layoff.

Mr. Arias has been paid \$456.00 in job insurance benefits for the two weeks ending June 18, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether any disqualification should be imposed for Mr. Arias' failure to return to work after a layoff. The prior decision disqualified him on the basis that the wages offered did not meet the criteria of Iowa Code section 96.5(3)a. The administrative law judge does not consider this section to be applicable in the case of a recall. Such an application might, in some cases, have the effect of requiring an employer to offer higher wages on recall in order to avoid liability for unemployment benefits. Pursuant to 871 IAC 24.24(2)b, an individual who fails to return from a layoff is considered to have refused suitable work.

Because Mr. Arias failed to return to work following his layoff, benefits are denied as of the Sunday of the week he was to return, June 5, 2005. He received benefits for each of the two weeks ending June 18, 2005. 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 July 7, 2005, reference 03, is hereby reversed. Mr. Arias refused recall to work for no good cause. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Arias has been overpaid \$456.00 in job insurance benefits.

cfc/kjf