

**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**

**TROY K CORDES
1210 WESTSIDE DR
POLK CITY IA 50226**

**CITY OF DES MOINES
PERSONNEL DEPARTMENT
E 1ST & LOCUST ST
DES MOINES IA 50309**

**CAROL MOSER
ATTORNEY AT LAW
CITY LEGAL DEPARTMENT
E 1ST & LOCUST ST
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**MATT BALLARD
BUSINESS AGENT
TEAMSTERS LOCAL #90
2425 DELAWARE AVE
DES MOINES IA 50317**

**Appeal Number: 04A-UI-08189-CT
OC: 06/27/04 R: 02
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:

City of Des Moines filed an appeal from a representative's decision dated July 19, 2004, reference 02, which held that no disqualification would be imposed regarding Troy Cordes' separation from employment. After due notice was issued, a hearing was held by telephone on August 19, 2004. Mr. Cordes participated personally and was represented by Matt Ballard, Business Agent, Teamsters Local #90. The employer participated by Patrick Kozitza, Deputy Public Works Director, and was represented by Carol Moser, Attorney at Law. Exhibits One through Eight were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Cordes was employed by the City of Des Moines from November 17, 1997 until July 3, 2004 as a full-time refuse collector. He was discharged from the employment after a series of disciplinary actions.

Individuals in Mr. Cordes' job classification were entitled to reimbursement for two pairs of safety shoes each fiscal year. In July 1999, it was discovered that Mr. Cordes had received and negotiated three shoe vouchers during the fiscal year that ended on June 30, 1999. He was not formally disciplined but his shoe allowance was reduced for the then current fiscal year. On May 9, 2000, Mr. Cordes was suspended for one day for commingling yard waste bags with solid waste in a collection truck. He knew that his actions were contrary to the employer's policies. In June 2002, he received a written warning for reporting to work late. In November 2002, he received a verbal warning for tardiness. In January 2003, Mr. Cordes received a written reminder about tardiness after he again reported for work late. On March 21, 2003, Mr. Cordes was suspended for one day because of continuing problems with tardiness. There were no further issues of tardiness after that point.

On January 13, 2004, Mr. Cordes received a written warning because of what the employer considered an ineffective use of working time. On December 26, he was washing his work vehicle while operations were in overtime status. He was admonished by his supervisor that he should not be washing his vehicle on overtime. On December 30, he was again observed washing his work vehicle during overtime. Although the vehicles are to be washed, the washing is not considered an essential task. The warning letter Mr. Cordes received advised him that he was being given his last chance to maintain his employment.

In October 2003, the City of Des Moines began requiring its customers to pay for the collection of any items not contained in the city-provided waste receptacle. As a result of the change, the city discontinued allowing city employees to dump personal waste in city-owned receptacles or dumpsters. This new policy was not effectively communicated to all employees. In April 2004, Mr. Cordes was observed disposing of personal construction waste in a city dumpster. He was told by his supervisor, Gene Hale, that he could no longer dump personal waste in the city dumpster. To make sure that all employees were aware of the policy, the municipal solid waste administrator, on April 14, 2004, directed that the policy be posted. On or about June 17, 2004, the employer investigated a complaint that someone was observed dumping garbage in a city dumpster. The employer searched the dumpster and found several pieces of mail directed to Troy and/or Sharil Cordes. On June 21, Mr. Cordes was notified that a pre-disciplinary action hearing was scheduled for July 1. Mr. Cordes was notified of his discharge on July 3, 2004.

Mr. Cordes has received a total of \$1,610.00 in job insurance benefits since filing his claim effective June 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cordes 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). For reasons which follow, the administrative law judge concludes that the employer has satisfied its burden of proof. On two

separate occasions, Mr. Cordes engaged in conduct he knew to be contrary to the employer's standards because he had been verbally advised of such. In spite of being told on December 26 that he should not wash his vehicle while on overtime, he did it again on December 30, just four days later. In April, he was told that he could not discard personal waste in city dumpsters. In spite of this verbal admonition and in spite of the policy being posted at that time, Mr. Cordes again dumped his personal waste in a city receptacle in June 2004. He may well have seen others dumping personal waste in city dumpsters. However, the evidence failed to establish that management was aware of this practice after April 2004 and that management took no disciplinary action against those still violating the policy.

Mr. Cordes' conduct in engaging in activities after being specifically told he could not evinces a flagrant disregard for the employer's standards. Mr. Cordes chose to do what he wanted rather than follow the specific directives of management. The activities he engaged in, washing his truck and disposing of personal waste, were relatively minor. However, the fact that he engaged in the conduct after specifically being told not to constituted substantial misconduct sufficient to result in a disqualification from benefits.

Mr. Cordes has received benefits since filing his 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 July 19, 2004, reference 02, is hereby reversed. Mr. Cordes was discharged for misconduct in connection with his employment. 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. Cordes has been overpaid \$1,610.00 in job insurance benefits.

cfc/b