

**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**

**HOWARD WIERSEMA
6226 PENROSE RD
FULTON IL 61252**

**ALLIED WASTE NORTH AMERICA INC
C/o ADP UCM THE FRICK COMPANY
PO BOX 66744
ST LOUIS MO 63166-6864**

**Appeal Number: 04A-UI-02654-ET
OC 02-08-04 R 04
Claimant: Appellant (1)**

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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 4, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 31, 2004. The claimant participated in the hearing. Rick Humphries, General Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time truck driver for Allied Waste North America from July 24, 2003 to February 12, 2004. On February 10, 2004, the claimant failed to follow the employer's

procedure requiring drainage of water from a slag box he picked up at ADM. The slag is contaminated and must be disposed of in a specific manner. The drainage process takes approximately 15 minutes. Because the box was not sufficiently drained, the claimant's truck left a half-mile trail throughout the plant, which eventually froze and required ADM to hire a clean-up crew because of environmental concerns. ADM called Rick Humphries, the employer's general manager, to come to the plant and observe the situation and Mr. Humphries saw a "clear path" of slag. The claimant was the only driver on duty that night but when Mr. Humphries confronted him about the incident the claimant denied responsibility, called Mr. Humphries a liar and stated he could "kiss my ass." The employer verbally warned the claimant August 12, 2003, after he bumped the conveyer, damaging the support cable, because the container was too high to clear the conveyor. The employer prepared a written warning but did not present it to the claimant and he did not sign it. On November 17, 2003, the claimant received and signed a written warning after he tightened a cable so tightly that it became wedged between the back roller and left rail, breaking the back rail on the truck, causing it to be unusable that day. The employer had also talked to the claimant about writing inappropriate comments on daily reports in September, November, December and February regarding the driver on the day shift, the equipment, and about the employer "spending the budget money on your show calves." He also wrote that that the employer should "quit putting the budget money in your pockets." The claimant denies writing the comments but the handwriting appears to be his. The employer terminated the claimant's employment February 12, 2004, following the February 10, 2004, incident at ADM.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an

intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies responsibility for leaving the trail of slag at ADM February 10, 2004, and disputes whether a trail was left, he was the only driver on duty that night and Mr. Humphries observed the damage when ADM called him to the scene and Mr. Humphries reasonably concluded the claimant did not drain the slag before driving away. The claimant had two preventable accidents for which he also did not take responsibility. He continued to write disparaging comments of a personal nature about his daytime counterpart and the employer on his daily reports, despite being told by the employer not to do so. The administrative law judge understands that an employee can make a mistake. In this case, however, the claimant's refusal to accept responsibility for any of the incidents described by the employer and the nature of the comments he made on his daily reports indicates an unwillingness to change his attitude and behavior; and his actions demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The March 4, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/b