

**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**

**ROBERT H ALLEN
202 – 4TH ST #421
DES MOINES IA 50309**

**ACTION WAREHOUSE CO LTD
1701 E EUCLID
DES MOINES IA 50313**

**Appeal Number: 05A-UI-03306-DWT
OC: 02/20/05 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Action Warehouse Company, Ltd. (employer) appealed a representative's March 17, 2005 decision (reference 01) that concluded Robert H. Allen (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 April 19, 2005. 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. Bob Grett, the warehouse supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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 April 12, 2004. The claimant worked as a full-time warehouse laborer. The employer's written attendance policy informs employees they will be discharged if an employee accumulates six attendance points within a year.

On November 16, 2004, the employer suspended the claimant for accumulating five attendance points. Throughout the course of his employment, the claimant experienced transportation problems. Many times the claimant depended on other people to get him to work. The claimant's transportation problems resulted in attendance points being assessed against him.

On February 10, 2005, the claimant was 2.7 hours late for work. The employer understood the claimant was late because he again had transportation problems. When the claimant reported almost three hours late for work, he received another attendance point. This made a total of six attendance points the claimant accumulated in less than a year. The employer discharged the claimant for violating the employer's attendance policy.

The claimant established a claim for benefits during the week of February 20, 2005. He filed claims for the weeks ending February 26 through March 26, 2005. The claimant received his maximum weekly benefit amount of \$222.00 in benefits each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

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 claimant knew or should have known his job was in jeopardy when the employer gave him a suspension in mid-November for accumulating five attendance points in less than a year. The evidence indicates the claimant's attendance problem occurred as a result of continued transportation problems. Without the claimant's testimony, the facts do not indicate why the claimant was late or what arrangements he had made to get to work on time. Therefore, a preponderance of the evidence establishes that the claimant's repeated failure to report to work on time constitutes work-connected misconduct. As of February 20, 2005, the claimant is not qualified to receive unemployment insurance benefits.

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 February 26 through March 26, 2005. The claimant has been overpaid a total of \$1,110.00 in benefits he received for these weeks.

DECISION:

The representative's March 17, 2005 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 February 20, 2005. 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 unemployment insurance benefits during the weeks ending February 26 through March 26, 2005. The claimant has been overpaid and must repay \$1,110.00 in benefits he received for these weeks.

dlw/sc