

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

TONY G THOMAS
1444 E WALNUT #9
DES MOINES IA 50316

MID-AMERICA RECYCLING COMPANY
2742 E MARKET ST
DES MOINES IA 50317

Appeal Number: 06O-UI-02561-CT
OC: 12/11/05 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 for Misconduct

STATEMENT OF THE CASE:

Mid-America Recycling Company filed an appeal from a representative's decision dated January 4, 2006, reference 01, which held that no disqualification would be imposed regarding Tony Thomas' separation from employment. Pursuant to the appeal, a telephone hearing was held on January 24, 2006. The January 31, 2006 decision of the administrative law judge reversed the allowance of benefits. Mr. Thomas filed a further appeal with the Employment Appeal Board which, on February 24, 2006, remanded the matter for a new hearing because Mr. Thomas had not been able to participate in the prior hearing through no fault of his own.

Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on March 23, 2006. Mr. Thomas participated personally. The employer participated by Rex Kelly, General Manager, and Greg Stone, Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Thomas was employed by Mid-America Recycling Company from April 7, 2003 until November 29, 2005 as a full-time laborer. His job was to remove plastic from aluminum cans as they came to him on a conveyor.

On February 23, 2005, Mr. Thomas received a verbal warning because he was allowing too much plastic to pass. On March 9, he received his first written warning because the problem was continuing. On June 20, he received a warning and a three-day suspension because of the same problems. The decision to discharge was based on the fact that Mr. Thomas was still not pulling out the plastic from aluminum. If there is too much plastic in with the aluminum, the employer's customer will reject it. Mr. Thomas was the only sorter on the line during this shift. His failure to sort plastic from aluminum was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Thomas 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. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Thomas was discharged for repeatedly failing to remove plastic from aluminum as he sorted. He knew that the employer's customer would reject the bales of aluminum if there was plastic present. He had demonstrated the ability to perform his job in the manner desired by the employer.

Mr. Thomas was amply warned that his continued employment was in jeopardy because of his failure to sort properly. In spite of repeated warnings, he failed to meet the employer's standards. For the above reasons, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Thomas received benefits after filing his claim effective December 11, 2005. An overpayment was assessed in the decision issued January 31, 2005.

DECISION:

The representative's decision dated January 4, 2006, reference 01, is hereby reversed. Mr. Thomas 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.

cfc/tjc