

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KEVIN D O'CONNOR**  
Claimant

**APPEAL NO. 10A-UI-05972-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 03/14/10**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kevin O'Connor filed an appeal from a representative's decision dated April 12, 2010, reference 01, which denied benefits based on his separation from Heartland Express, Inc. of Iowa (Heartland). After due notice was issued, a hearing was held by telephone on June 30, 2010. Mr. O'Connor participated personally and was represented by Heather Carlson, Attorney at Law. Exhibit A was admitted on the Mr. O'Connor's behalf. The employer participated by Dave Dalmasso, Human Resources Representative, and Gary Wheatley, Shop Foreman. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. O'Connor was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. O'Connor was employed by Heartland from March 7, 2007 until March 2, 2010. He worked full time as an over-the-road regional driver. On March 2, 2010, he was directed to take his vehicle to the employer's Fort Smith, Arkansas, facility for servicing. When the shop foreman opened the side compartment of the vehicle, he found a cardboard six-pack container that contained six bottles of relatively the same size.

Three of the bottles in the six-pack contained water. These three were facing towards the door and would be visible when the compartment was opened. The three remaining bottles, placed behind the water, contained Mike's Hard Liquor, an alcoholic beverage. The shop foreman examined the bottles of Mike's Hard Liquor and had another individual inspect them to make sure they were sealed and unopened. After determining that the bottles of alcohol were sealed and unopened, the decision was made to discharge Mr. O'Connor.

Mr. O'Connor had been the only individual assigned to drive the vehicle since November of 2009. He did not have a co-driver assigned to him. When questioned by the employer, he indicated that the bottles were placed in the truck inadvertently when he moved items from his

personal vehicle to the truck. The possession of alcohol in a company vehicle is prohibited by the employer's policy. It is also a violation of the Federal motor carrier safety regulations. The above matter was the sole reason for Mr. O'Connor's separation from Heartland.

**REASONING AND CONCLUSIONS OF LAW:**

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. O'Connor was discharged after alcohol was found in the vehicle assigned to him. It was his contention during the hearing that no alcohol was found in his vehicle, only the cardboard container that had previously held bottles of Mike's Hard Liquor. It was further his contention that all six bottles found by the employer contained water. The administrative law judge found the employer's testimony more credible and persuasive.

Mr. O'Connor did not dispute that he was aware of the work rule prohibiting the possession of alcohol in the vehicle. Therefore, his possession of three bottles of Mike's Hard Liquor in the company vehicle must be seen as an intentional violation of the employer's work rules. His conduct constituted a substantial disregard of the standards the employer had the right to expect and is misconduct within the meaning of the law. As such, benefits are denied.

**DECISION:**

The representative's decision dated April 12, 2010, reference 01, is hereby affirmed. Mr. O'Connor was discharged by Heartland for misconduct. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs