

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD D PEARCE
Claimant

APPEAL NO. 10A-UI-00215-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASCHENBRENNER TRUCKING INC
Employer

OC: 02/22/09
Claimant: Respondent (3-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Aschenbrenner Trucking, Inc. filed an appeal from a representative's decision dated December 31, 2009, reference 03, which held that Richard Pearce was laid off due to lack of work on November 22, 2009. After due notice was issued, a hearing was held by telephone on February 15, 2010. Mr. Pearce participated personally. The employer participated by Bob Witt, Dispatcher.

ISSUE:

At issue in this matter is whether Mr. Pearce 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. Pearce began working for Aschenbrenner Trucking, Inc. on July 9, 2009 as an over-the-road driver. He did not work due to lack of work during the week ending November 28, 2009. He returned to work but became separated on or about December 23 because he lost his license to drive as a result of an OWI. The employer did not have other work he could do that did not require a valid driver's license.

Mr. Pearce filed an additional claim for job insurance benefits effective November 22, 2009. He has received a total of \$2,494.00 in job insurance benefits since December 27, 2009.

REASONING AND CONCLUSIONS OF LAW:

When Mr. Pearce initially filed his additional claim for job insurance benefits, he was on a one-week layoff as the employer had no work for him the week ending November 28, 2009. Therefore, he is entitled to job insurance benefits for the week. He returned to work and was later discharged. 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. Pearce was discharged because he no longer met the requirements of the job. He did not have a valid license that would allow him to continue driving the employer's vehicles. Where an individual's own conduct renders him unemployable by his employer, he is guilty of misconduct within the meaning of the law. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). It was Mr. Pearce's conduct in drinking and driving that brought about the loss of his license and, consequently, his ability to drive for Aschenbrenner Trucking, Inc. for the above reasons, he is not entitled to job insurance benefits as of December 27, 2009.

Mr. Pearce has received benefits since December 27, 2009. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated December 31, 2009, reference 03, is hereby modified. Mr. Pearce is allowed job insurance benefits effective November 22, 2009 as he was on a temporary layoff. Benefits are denied effective December 27, 2009 when he was discharged for disqualifying 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. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Pearce will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs