

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BARRY JOYNER
Claimant

**NPC INTERNATIONAL INC
PIZZA HUT**
Employer

APPEAL NO. 14A-UI-11681-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/12/14
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Pizza Hut (claimant) appealed an unemployment insurance decision dated November 3, 2014, (reference 02), which held that Barry Joyner (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 3, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Cheryl Demaris, Area General Manager and Brandy Rahjes, Employer Representative.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time delivery driver from December 29, 2004, through approximately October 1, 2014, when he was discharged from his driving position. A condition of employment was that he maintain a good driving record. In February 2014, the claimant was convicted of operating a motor vehicle while under the influence of intoxicants (OWI) but he never told the employer about it. When the employer learned about his driving record on approximately October 1, 2014, the claimant was no longer allowed to drive pursuant to company policy. The employer offered the claimant work as a cook or in production but he declined that.

The claimant filed a claim for unemployment insurance benefits effective October 12, 2014, and has received benefits after the separation from employment in the amount of \$228. Employer Representative Brandy Rahjes participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on approximately October 1, 2014, for a conviction of driving under the influence or operating a vehicle while under the influence while employed with the employer. Maintaining a good driving record was a condition of employment. Where an individual's driving restrictions have been self-inflicted and the individual had reason to know that his driving record was putting his job in jeopardy, the loss of ability to drive can be found to be intentional, and therefore disqualifying misconduct. *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980). The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$228 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated November 3, 2014, (reference 02), is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$228.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css