

**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**

**DARREN L POMMER
700 W RIDGEWAY #847
CEDAR FALLS IA 50613**

**ALL IOWA CONTRACTING COMPANY
5613 MCKEVETTE RD
WATERLOO IA 50701-9146**

**Appeal Number: 06A-UI-02422-JTT
OC: 12/18/05 R: 03
Claimant: Appellant (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)

871 IAC 24.1(113) - Layoff

STATEMENT OF THE CASE:

The claimant, Darren Pommer, filed a timely appeal from the February 21, 2006 reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 20, 2006. The claimant participated. General Manager Mike Lien represented the employer and presented additional testimony through Accounts Payable Specialist Tracy Clinton. Exhibits One through Seven were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Darren Pommer was employed by All Iowa Contracting Company as a full-time CDL driver/laborer from April 4, 2004 until December 9, 2005, when General Manager Mike Lien laid him off. The

employer is a contractor that applies painted markings on highways. At the time of the layoff, the employer had not decided whether it would be recalling Mr. Pommer to work in the spring. In response to the layoff, Mr. Pommer established a claim for benefits that was effective December 18, 2005, and began his search for other employment.

On January 6, 2006, Accounts Payable Specialist Tracy Clinton discovered irregularities with a charge/fuel card bill concerning the card assigned to one of the employer's truck. The truck had been assigned to Mr. Pommer during the employment. The employer contacted the charge card company and learned that someone had used Mr. Pommer's personal identification number (PIN) to make charges to the account. The PIN consisted of the last four digits of Mr. Pommer's social security number. The employer reported the matter to law enforcement, which conducted an investigation and within a week obtained video surveillance of Mr. Pommer using the card. Mr. Pommer was charged with theft. On February 13, 2006, Mr. Pommer entered a guilty plea to Theft in the Fifth Degree in Black Hawk County case number SMCR137515. On February 3, 2006, the employer submitted to Iowa Workforce Development a Notice of Separation or Refusal of Work under Conditions That May Disqualify, form 60-0154, and a representative entered a decision disqualifying Mr. Pommer for benefits. The employer had no knowledge of any misconduct on the part of Mr. Pommer at the time it laid him off.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether Mr. Pommer is disqualified for unemployment insurance benefits based on misconduct that came to the employer's attention after the employer laid him off.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

Iowa Code Section 96.5 provides only two bases for denying unemployment insurance benefits based on the separation from employment: voluntarily quit without good cause attributable to the employer and discharge for misconduct in connection with the employment. See Iowa Code Sections 96.5(1) and (2)(a). This case involves neither.

The evidence in the record establishes that Mr. Pommer's separation from the employment with All Iowa Contracting Company occurred on December 18, 2005, at the time the employer laid him off. The evidence further establishes that Mr. Pommer's separation from the employment on December 18, 2005 was not a discharge and did not concern misconduct.

The evidence in the record establishes misconduct on the part of Mr. Pommer *after* he separated from the employment with All Iowa Contracting Company. The evidence establishes that Mr. Pommer committed a crime and that All Iowa Contracting Company was the victim of that crime. However, misconduct that occurred and/or came to the employer's attention *after the separation from the employment* does not change the character and nature of the separation from the employment from a layoff to a discharge for misconduct. The criminal conduct that came to the attention of the employer and law enforcement *after* the separation from employment is an issue that is separate from the determination of the claimant's eligibility for unemployment insurance benefits and the employer's liability for those benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Pommer was laid off and is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Pommer.

DECISION:

The Agency representative's decision dated February 21, 2006, reference 01, is reversed. The claimant was laid off from the employment and is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

jt/s