

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK A SCOVEL**

Claimant

**APPEAL NO. 09A-UI-18666-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PECHINEY PLASTIC PACKAGING INC**

Employer

**OC: 11/15/09**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Mark Scovel filed an appeal from a representative's decision dated December 8, 2009, reference 01, which denied benefits based on his separation from Pechiney Plastic Packaging, Inc. (Pechiney). After due notice was issued, a hearing was held by telephone on January 26, 2010. Mr. Scovel participated personally. The employer participated by Kimberly Griffith, Human Resources Manager, and Mike Phillips, Production Supervisor. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Scovel 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. Scovel worked for Pechiney from August 20, 2007 until November 2, 2009 as a full-time machine operator. On August 11, 2009, he was suspended from work pending a further determination. He had acknowledged that he failed to take a proper measurement in the performance of his job and that his failure may have been the result of being under the influence of alcohol. It was subsequently agreed that he would be allowed to retain his job if he underwent the in-patient treatment program he had already scheduled. As a condition of his continued employment, he would be subject to random drug and alcohol testing for one year after his return from treatment.

Mr. Scovel was in treatment for 30 days. He remained sober until he suffered a relapse on November 2. On that evening, the supervisor went looking for him and located him coming downstairs. Because he appeared dazed, the supervisor had him come to the office. He appeared glassy-eyed and disoriented. He walked slowly with a side-to-side gait. The supervisor asked if he was under the influence of alcohol and Mr. Scovel acknowledged that he was. The supervisor had a union steward come to the office and Mr. Scovel again stated, "Yes, I'm drunk." Arrangements were made for him to be tested for alcohol at Concentra. The test results were not received until after Mr. Scovel's discharge.

**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. Scovel was discharged for reporting to work under the influence of alcohol, a fact that he acknowledged in the presence of his employer and his union steward. He knew that such conduct was contrary to the employer's standards.

Mr. Scovel had the ability to refrain from drinking as he did so for a period of at least 60 days. He chose to drink rather than utilize the coping mechanisms he no doubt learned during treatment. As such, the condition he was in on November 2 was voluntary. Mr. Scovel was a machine operator. An individual under the influence of alcohol while working around machinery with moving parts presents a danger to himself and others working around him. Mr. Scovel could have subjected the employer to unnecessary workers' compensation claims had he or others been injured at work due to his condition.

For the reasons cited herein, the administrative law judge concludes that substantial misconduct has been established by the evidence. As such, benefits are denied.

**DECISION:**

The representative's decision dated December 8, 2009, reference 01, is hereby affirmed. Mr. Scovel was discharged by Pechiney for misconduct in connection with his employment. 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

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