

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TREVOR J RUS**  
Claimant

**C&W FACILITY SERVICES INC**  
Employer

**APPEAL NO. 19A-UI-07809-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/25/19  
Claimant: Appellant (1)**

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Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Trevor Rus filed a timely appeal from the September 30, 2019, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Rus was discharged on August 28, 2019 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on October 25, 2019. Mr. Rus participated. Cindy Paris represented the employer and presented additional testimony through Keith Thompson. Exhibits 1 through 6 and A were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Trevor Rus was employed by C&W Facility Services, Inc. as a full-time Electrical and Instrumentation Technician from November 2018 until August 28, 2019, when the employer discharged him from the employment for possessing a controlled substance and drug paraphernalia on the employer's premises in violation of the employer's written work rules. Mr. Rus's regular work hours were 6:00 a.m. to 4:30 p.m. On August 20, 2019, the employer gave Mr. Rus permission to leave work early so that Mr. Rus could address tornado damage at or near his home. Mr. Rus had driven to the workplace that morning and had parked his personal vehicle in the employer's parking lot. Mr. Rus's driving privileges were suspended by the State of Iowa at the time Mr. Rus drove to and from the workplace that day. Mr. Rus knew his driving privileges were suspended at the time he elected to operate the vehicle. While Mr. Rus was driving from the workplace to his home on the morning of August 20, Mr. Rus's truck overheated. While Mr. Rus was on the side of the road dealing with his overheated truck, an Oskaloosa police officer arrived at the scene. The officer charged Mr. Rus with a driving offense. In connection with the arrest, the officer searched Mr. Rus's truck and located in the passenger door compartment a bag containing methamphetamine and a pipe used for smoking methamphetamine. The officer charged Mr. Rus with possession of a controlled substance and

possession of drug paraphernalia. Mr. Rus remained in jail overnight and was released from custody the next morning after his initial appearance before a judge.

On August 20 or 21, Mr. Rus sent a text message to his supervisor to advise of his incarceration, the criminal charges, and his need to appear in court on future dates. When the supervisor replied that he thought Mr. Rus had just been going home to check on tornado damage, Mr. Rus sent the following message in response:

I was headed there. My truck started to overheat so i pulled over along side of the road and a cop pulled in. He then arrested me for driving under suspwnsion [sic] and he found a pip and a small bag with meth that I have forgotten about

The employer lacked a work rule that would subject Mr. Rus to discipline in connection with off-duty conduct.

The employer has a Substance Abuse Prevention Policy that is contained in the handbook the employer provided to Mr. Rus at the start of the employment. The policy included the following:

The unlawful or unauthorized manufacture distribution, dispensation, possession, sale or use of alcohol, illegal drugs or controlled substance on company premises, or while engaged in C&W Services activities also are strictly prohibited.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Violation of a specific work rule, even off-duty, can constitute misconduct. In *Kleidosty v. EAB*, 482 N.W.2d 416, 418 (Iowa 1992), the employer had a specific rule prohibiting immoral and illegal conduct. The worker was convicted of selling cocaine off the employer's premises. The Court found misconduct. In its analysis, the Court stressed the importance of a specific policy, even one which was stated only in terms of illegal or immoral conduct.

The evidence in the record establishes a discharge for misconduct in connection with the employment. The employer reasonably concluded, based on strong circumstantial evidence and Mr. Rus's text message admission, that Mr. Rus had possessed a controlled substance and drug paraphernalia on the employer's premises on August 20, 2019. The presence of the methamphetamine and the meth pipe in the passenger compartment of Mr. Rus's truck constituted possession of those items on the employer's premises and a violation of the employer's written work rules. Mr. Rus's decision to have such items in the vehicle he drove to and from work demonstrated a willful and wanton disregard for the employer's interests in maintaining a safe, drug-free work environment. The conduct upon which the discharge was based came to light during the off-site arrest, but was in fact conduct that occurred while Mr. Rus was on duty and on the employer's premises. Mr. Rus is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Rus must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The September 30, 2019, reference 02, decision is affirmed. The claimant was discharged on August 28, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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