

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULI A WALKER
Claimant

KRAUS PLUMBING AND HEATING LLC
Employer

APPEAL NO. 24A-UI-07872-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/03/24
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

On September 4, 2024, the employer filed a timely appeal from the August 27, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the IWD deputy's conclusion that the claimant was discharged on August 2, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on September 20, 2024. Juli Walker (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Shelly Kraus represented the employer and presented additional testimony through Brian Krause. Exhibits 1 through 5 were received into evidence. The administrative law judge took official notice of the IWD administrative record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant after April 2024 separation or in connection with the "additional claim" for benefits that was effective August 4, 2024.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Juli Walker (claimant) was employed by Kraus Plumbing and Heating, L.L.C., d/b/a Fosters Kraus, as a full-time HVAC service technician from 2011 until August 7, 2024, when the employer discharged her from the employment. Ms. Walker last performed work for the employer on August 2, 2024. Ms. Walker's standard work hours were 8:00 a.m. to 4:00 p.m., Monday through Friday. Ms. Walker's duties also included after-hours on-call duties pursuant to the on-call rotation. Ms. Walker's primary duties involved performing HVAC repairs in customer's homes. While conducting business for the employer, Ms. Walker operated the employer's vehicles. The employer assigned a specific work van to Ms. Walker. Because Ms. Walker would usually travel directly from her home to the first service call of the day, the employer had Ms. Walker drive her assigned service van home at night. The service van bore

the employer's logo, as did Ms. Walker's work uniform. When Ms. Walker's assigned service was unavailable, the employer made another work vehicle that bore the employer's logo available to Ms. Walker.

At about 11:30 a.m. on August 2, 2024 a customer or bystander called the employer's number to report that they had witnessed Ms. Walker pour alcohol into a cup. At the time, Ms. Walker was in the substitute work truck the employer had assigned to her while her usual assigned van was being repaired. Ms. Walker was supposed to be working but was in downtown Marion rather than at a jobsite. Joanna Warner, Fleet and Safety Manager spoke with the caller and relayed the caller's information to owner Brian Kraus and Scott Hendryx, Senior Manager and HVAC Service Manager. The employer contacted Ms. Walker and had her report to the workplace. When the employer asked Ms. Walker why she was downtown instead at a jobsite, Ms. Walker asserted that she had been dropping things off at the Legion. The employer was aware that there was no work-related reason for Ms. Walker to be in downtown Marion at the time. When questioned about the presence of alcohol in the employer's truck, Ms. Walker admitted there was alcohol in the truck but asserted the alcohol was from the previous evening and that she had just left the alcohol in the truck. When the employer asked Ms. Walker if she had poured alcohol into a cup in the vehicle, Ms. Walker denied doing so. The employer asked Ms. Walker to submit to a drug and alcohol test and Ms. Walker agreed to do so. The employer had Ms. Warner transport Ms. Walker to a drug and alcohol testing facility. The employer directed Ms. Walker not to return to the workplace until the employer completed its investigation.

After Ms. Walker departed with Ms. Warner, the employer promptly searched the work truck Ms. Walker had been operating that day. The employer located three bottles of alcohol behind the truck seat: a three-fourths full bottle of vodka, a three-fourths full bottle of butterscotch schnapps and another liquor bottle missing its cap. In the cup holder, the employer located a travel tumbler contained ice and liquid that smelled of alcohol. See Exhibit 4.

On August 2, 2024, the drug and alcohol testing vendor notified the employer that it would need to forward the specimen obtained from Ms. Walker to an outside laboratory for confirmatory testing. The employer does not know what type of bodily specimen needed to be forwarded.

Despite the employer's directive not to return to the workplace until the employer had completed its investigation, Ms. Walker went to the employer's shop on August 4, 2024 to retrieve items from the work truck. The employer does not know what Ms. Walker removed from the truck at that time.

On August 5, 2024, the employer transported Ms. Walker's usual assigned service van transported to the workplace, where the employer discovered eight liquor bottles containing alcoholic spirits. See Exhibit 5.

On August 7, 2024, the employer had a third-party human resources representative notify Ms. Walker that she was discharged from the employment. The employer did not wait to receive the final written drug and alcohol test result before discharging Ms. Walker from the employment for possessing and using alcohol in the employer's work vehicles in violation of the employer's written Drug and Alcohol-Free Workplace policy. The policy includes the following:

FOSTERS KRAUS is committed to providing a drug and alcohol-free workplace.

The possession, manufacturing, distribution, dispensation, or use of any controlled substance or alcohol in the workplace is strictly prohibited. ... Any Employee who

violates this policy will be subject to disciplinary action up to and including termination and possible civil and criminal conviction, if applicable.

The policy applies to all Employees, contractors, labor hire or any other person that is engaged by FOSTERS KRAUS to perform work.

See Exhibit 2. The employer shared the policy with Ms. Walker in January 2022 in connection with having Ms. Walker sign to acknowledge her obligation to abide by the employer's Policy and Procedures, Co-Workers Handbook, and General Safety Rules and Regulations. The employer periodically discussed the drug and alcohol prohibition at safety meetings.

Ms. Walker established an original claim for unemployment insurance benefits that was effective March 3, 2024, while she still in the employment, and received benefits in April 2024 for March and April 2024. Ms. Walker has not received benefits in connection with the claim since those paid in April 2024. In connection with the separation from the employment, Ms. Walker established an "additional claim" that was effective August 4, 2024. Ms. Walker has not received benefits in connection with the additional claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

...

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the text of the statute).

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 Iowa Admin. Code r.871 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).

The evidence in the record establishes an August 7, 2024 discharge for misconduct in connection with the employment. The evidence establishes that on August 2, 2024 Ms. Walker knowingly and intentionally violated the employer's reasonable and uniformly enforced Drug and Alcohol-Free Workplace Policy by possessing alcohol in the employer's work truck during work hours with the intention of consuming the alcohol during work hours. The alcohol Ms. Walker possessed included the mixed alcoholic drink in the travel tumbler as well as the three bottles of alcohol Ms. Walker concealed behind the truck seat. The August 5, 2024 inventory of the service van revealed that Ms. Walker had also earlier knowingly and intentionally violated the employer's reasonable and uniformly enforced Drug and Alcohol-Free Workplace Policy by possessing alcohol in the employer's service van. Ms. Walker's conduct not only violated the employer's policy but was also illegal. See Iowa Code section 321.284 (open containers in motor vehicles). Ms. Walker's misconduct exposed the employer to potential liability in connection with the illegal conduct. Ms. Walker's misconduct exposed the employer to potential legal liability, and unduly exposed her and others to potential serious harm, in connection with her decision to combine alcohol possession and consumption with performance of her work duties. Ms. Walker's misconduct, observed by a customer or bystander, exposed the employer to potential or actual reputational damage. To make matters worse, Ms. Walker was intentionally dishonest with the employer on August 2, 2024 when questioned about her observed possession of alcohol in the employer's truck. Ms. Walker's conduct demonstrated an

intentional and substantial disregard of the employer's interests. Ms. Walker is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Walker must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning August 4, 2024, the effective date of the "additional claim."

Because Ms. Walker has received benefits no benefits after April 2024, there is no overpayment of benefits to address in this matter.

DECISION:

The August 27, 2024 (reference 01) decision is REVERSED. The claimant was discharged on August 7, 2024 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning August 4, 2024, the effective date of the "additional claim."



James E. Timberland
Administrative Law Judge

October 4, 2024
Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.