

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HARRY T CARVALHO
Claimant

APPEAL NO. 09A-UI-02881-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REINERT MACHINE SHOP INC
Employer

**Original Claim: 02/01/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Harry Carvalho, filed an appeal from a decision dated February 20, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 18, 2009. The claimant participated on his own behalf. The employer, Reinert Machine Shop, participated by Owner Paul Reinert and Cherokee, Iowa, Chief of Police Steve Schuck.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Harry Carvalho was employed by Reinert Machine Shop from April 2006 until January 30, 2009 as a full-time welder. On January 29, 2009, the claimant stayed past quitting time to work on his personal vehicle with the permission of Owner Paul Reinert. Mr. Reinert left around 5:45 p.m. and the claimant was the only one in the shop at that time.

The next morning around 6:55 a.m., another employee informed Mr. Reinert there was a strange and suspicious object in the bathroom. The employer discovered a piece of aluminum foil with burn marks on it. He contacted Cherokee Chief of Police Steve Schuck, who arrived around 7:30 p.m. Chief Schuck identified it as having been used to prepare either meth or heroin. The two of them waited until Mr. Carvalho arrived for work shortly before 8:00 a.m.

The claimant denied the drug paraphernalia was his but also admitted no one other than he had been in the shop after Mr. Reinert had left the night before. The employer suggested he should take Mr. Carvalho to the hospital for a drug screening test and the claimant stated it would be pointless because he would not pass. The Department of Human Services had taken drug samples from his residence the night before, along with hair samples from himself, a woman with whom he was living, and a minor child. The county sheriff had raided the home a week or so before, looking for meth.

After acknowledging he would not pass the test Mr. Carvalho was asked whether that meant he had controlled substances in his system from use or other exposure in the past 72 hours. He admitted this was true. He was discharged at that time for violation of the employer's policy prohibiting employees from being under the influence of controlled substances in the work place.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

The claimant did deny the drug paraphernalia was his but also admitted he would not pass a drug screen because he had controlled substances in his system. His home had been raided by law enforcement not long before and he had been tested for drug use by the Department of Human Services, which test he knew he would not pass. If he was fully aware he would not pass any drug screen test proposed on January 30, 2009, it is an admission he was using controlled substances, and they were still in his system while he was in the workplace. This is a violation of known company rules and is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of February 20, 2009, reference 01, is affirmed. Harry Carvalho is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw