

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**KENNETH D GIBSON**  
Claimant

**APPEAL NO. 21A-UI-11301-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TANTARA TRANSPORTATION CORP**  
Employer

**OC: 01/03/21  
Claimant: Respondent (2R)**

---

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 31, 2021, 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 deputy's conclusion that the claimant was discharged on January 5, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on July 9, 2021. The claimant did not provide a telephone number for the hearing and did not participate. Shelly Sides represented the employer and presented additional testimony through Chad Dietz. Exhibits 1 and 2 were received into evidence. Omission of the overpayment issues from the hearing notice and the claimant's absence from the appeal hearing prevented the administrative law judge from addressing overpayment matters as part of the appeal hearing.

**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: The claimant was employed as a full-time over-the-road commercial truck driver from August 2020 until January 6, 2021, when David Riggan, Safety Director, discharged him from the employment. The claimant operated the employer tractor-trailer rig throughout the Midwest and would usually be out on assignment Sunday evening through Friday. The discharge was based on matters that came to the employer's attention on January 5, 2021, when the claimant brought his assigned truck to the employer's shop for routine maintenance. The service personnel discovered at that time that the truck was two to three gallons low on oil. This was despite the claimant's statement to the employer that he had put a gallon of oil in the truck before bringing it in for service. The engine would hold 12 gallons of oil when properly filled. What this meant was that the claimant had unreasonably failed to perform appropriate oil checks while operating the employer's truck and while he was responsible for such matters. The service personnel also discovered several quart-sized beverage containers containing urine in the cabin of the tractor. While it was not uncommon for drivers to urinate in a container as a stop-gap measure when

nature called and a restroom facility was not available, the common practice was to dispose of such items at the earliest convenience. The claimant had unreasonably accumulated several containers of urine and had thereby created the potential biohazard the service personnel encountered when the claimant delivered the truck to the workplace in that condition. When the claimant showed up at the employer's shop on the afternoon of January 5, 2021, he was wearing pajama bottoms, rather than jeans or some other acceptable work attire. It is unclear whether the claimant had interacted with a customer while wearing the sleep attire. The employer had not issued prior warnings or reprimands in connection with the employment.

## **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 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 a discharge for misconduct in connection with the employment. Though all of the matters that factored in the discharge came to the employer's attention on a single day, January 5, 2021, they reflected an ongoing, and in some respects shocking, intentional and substantial disregard of the employer's interests. The employer was understandably disturbed by the accumulation of several urine-filled containers in the cab of the truck. The conduct not only created a potential biohazard, but left the cab in what the employer accurately describes as a filthy condition. The employer was understandably concerned with the claimant's failure to properly maintain the engine oil level, a very basic and necessary component of maintaining the employer's costly asset and a responsibility the employer reasonably assigned to the claimant when the truck was in his possession. The employer was understandably disturbed by the claimant's bedroom attire. The claimant is disqualified for 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 for benefits going forward.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code §96.3(7)(a) and (b).

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau

**DECISION:**

The March 31, 2021, reference 01, decision is reversed. The claimant was discharged 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 for benefits going forward.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is **remanded** to the Benefits Bureau



---

James E. Timberland  
Administrative Law Judge

July 20, 2021  
Decision Dated and Mailed

jet/ol