

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JAMES J RISOLA  
214 N 20<sup>TH</sup> ST  
CLARINDA IA 51632-1400

PELLA CORPORATION  
c/o TALX EMPLOYER SERVICES  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-03403-AT  
OC: 02/19/06 R: 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a Discharge for Misconduct

STATEMENT OF THE CASE:

Pella Corporation filed a timely appeal from an unemployment insurance decision dated March 16, 2006, reference 01, which allowed benefits to James J. Risola. After due notice was issued, a telephone hearing was held April 20, 2006, with Mr. Risola participating. Jacqueline Jones of TALX Employer Services represented the employer, and Human Resources Representative John Smith testified.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: James J. Risola was employed by Pella Corporation from December 13, 2004 until he was suspended on February 15, 2006 and discharged on the following day. The final incident leading to his discharge was his absence on February 13, 2006. Mr. Risola was ill. In accordance with company policy, he provided a doctor's note when he returned to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The final incident was an absence due to illness, reported to the employer in accordance with its policy. While excessive unexcused absenteeism constitutes misconduct, absence due to illness cannot be held against an employee for unemployment insurance purposes, provided the employee properly reports the absence to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). Mr. Smith's testimony establishes the reason for the final absence and the fact of proper reporting. No disqualification may be imposed under Iowa law, even if some or all of the prior absences would be considered unexcused for unemployment insurance purposes.

DECISION:

The unemployment insurance decision dated March 16, 2006, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

cs/tjc