

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

WANDA HOLMES  
12074 BUTTERCUP TRL  
DRAKESVILLE IA 52552-8556

PELLA CORPORATION  
c/o SHEAKLEY UNISERVICE INC  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-05040-ET  
OC: 04-09-06 R: 03  
Claimant: Appellant (2)

**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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 4, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 13, 2006. The claimant participated in the hearing. Pam Fitzsimmons, Human Resources Representative; Jeanette Hanchett, Chopped Saw Operator; Evan Rittgers, Production Manager; Jake Burns, Department Manager; and Richard Carter, Employer Representative, participated in the hearing on behalf of the employer.

## 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 raw wood processor for Pella Corporation from August 10, 1998 to April 6, 2006. On March 30, 2006, the claimant followed the employer's procedure to lock-out and tag-out her machine. She then started to open the electrical box before a co-worker told her she was not supposed to do so and asked what she was doing. The claimant stated she was trying to "fix it" and the co-worker told her that only a Class B electrician can open the box so the claimant closed it and went to talk to an electrician. The employer learned of the situation and met with the claimant in the office. She admitted opening the electrical box but stated she did not know she was not allowed to do that because the machines downstairs had laminated cards if the electrician had to service the electrical box and there were no laminated cards in her work area. The claimant admitted the machine had a sticker stating "Authorized Personnel Only" and she knew she was not authorized to get into it. She received a written warning in October 2004 for failing to follow the lock-out tag-out procedures. The employer sent the claimant a certified letter April 6, 2006, stating her employment was terminated.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant violated the employer's policy by opening the electrical box, she credibly testified that she did not know she was not supposed to do so because the box did not have a laminated card on it. Her argument is further bolstered by the fact that she immediately stopped opening the box once her co-worker told her she was not allowed to get inside. Under these circumstances the administrative law judge finds the claimant's actions were not intentional and, consequently, do not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

#### DECISION:

The May 4, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/kkf