

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

DAVID C SALTER
1201 E 2ND ST
OTTUMWA IA 52501

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

Appeal Number: 05A-UI-05951-CT
OC: 05/08/05 R: 03
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Pella Corporation filed an appeal from a representative's decision dated May 26, 2005, reference 01, which held that no disqualification would be imposed regarding David Salter's separation from employment. After due notice was issued, a hearing was held by telephone on June 21, 2005. Mr. Salter participated personally. The employer participated by Susan Uhl, Human Resources Representative, and Kevin Gaul, Senior Plant Engineer. The employer was represented by Richard Carter of TALX Employer Services.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Salter was employed by Pella Corporation from June 28, 1999 until May 10, 2005 as a full-time maintenance technician. He was discharged after receiving two corrective action letters.

Mr. Salter's first corrective action letter was on January 21, 2005. He and a coworker rewired a motor and then checked for the proper rotation of the fan. The coworker was on the floor where he could observe the fan and Mr. Salter was working above him. The coworker told Mr. Salter he believed the fan was rotating in the wrong direction and, therefore, Mr. Salter changed it. As it turned out, the change caused the fan to be in the wrong direction. The problem caused damage to the machine in the approximate amount of \$6,000.00. Part of the reason there was damage was the fact that a sensor had been disabled and was not operational. Mr. Salter was not responsible for the sensor not working. Had the sensor been working properly, the error by Mr. Salter and his coworker would not have resulted in the extensive damage that did occur. Both Mr. Salter and the coworker were disciplined as a result of the incident.

Mr. Salter received his second corrective action letter as a result of actions on May 4. He and two others were working on a piece of machinery and properly locked out power to the unit. The three exited the booth, restored power, and then noted that there was a problem. All three individuals returned to the booth without locking out power. At that point, they were approached by Kevin Gaul, who reminded them of the need to lock out the power. All three were disciplined for not following the "lock out/tag out" procedure. Because it was his second corrective action letter, Mr. Salter was discharged on May 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Salter was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Salter was discharged because of two incidents that resulted in disciplinary action. He was not at fault with respect to the January 21 incident as he was relying on the observations of his coworker in checking the rotation of the fan. The coworker was in a superior position to determine if the fan was operating correctly. At most, Mr. Salter was negligent in failing to make direct observations rather than relying on the coworker. The incident of May 4 in which Mr. Salter failed to lock out power to a machine constituted no more than an act of negligence. Negligence constitutes disqualifying misconduct only if it is so recurrent that it manifests a substantial disregard of the employer's interests or standards.

Mr. Salter's two incidents of negligence are not sufficient to establish a pattern of negligence so recurrent as to manifest an intent to disregard the employer's standards or interests. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reason stated herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 26, 2005, reference 01, is hereby affirmed. Mr. Salter was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs