

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA OWEN
Claimant

APPEAL NO. 10A-UI-10101-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 06/13/10
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed an unemployment insurance decision dated July 9, 2010, reference 01, which held that Pamela Owen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 12, 2010. The claimant participated in the hearing. The employer participated through Jeff Heuton, Jennifer Grandgenett, and Shawn Bock. Employer's Exhibits One through Eight were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembly operator from January 6, 1997 through June 16, 2010. She was discharged for a Class 1 Infraction – Deliberately Restricting Output, which warrants immediate termination. The claimant's last day of work was approximately June 10, 2010 when she was working at the Gaskets station and was intentionally not passing along her completed work to the PUR station where Alicia Presley was working. Ms. Presley reported that the claimant was not passing along her finished work because the team member prior to the claimant's station was not done with her work. The employer questioned DJ Trenkamp and Brandon Grandgenett, Coordinators for the Fixed Line, and both said that no units should have been held at the Gasket station.

The employer pulled the claimant into the office on June 11, 2010 to question her about the situation. She was questioned as to the employer's standards and requirements and was fully aware of each. The claimant verified she deliberately held units at the Gasket station to control flow of the line so that she did not appear to be the bottleneck of the line. The employer advised

her that she was violating WIP (work in progress) levels and standard work for the station at which she was working and the claimant agreed.

The claimant had a history of not following processes and not getting along with her co-workers. She was formally counseled on November 12, 2009 for engaging in a verbal dispute with another team member on the Fixed line. The warning was issued because the co-worker felt threatened by the claimant's conduct. The claimant received a corrective action letter on January 6, 2010 for a Class 2 Infraction – Threatening, Intimidating and Interfering with Fellow Employee on Premises. The receipt of two Class 2 Corrective Action Letters within 24 months results in termination. The employer issued the claimant another formal counseling on June 4, 2010 for not following the proper steps of standard work while at the conductor station.

Through her evaluations, the claimant was coached on her performance several times. These occurred on December 1, 2006; June 13, 2007; July 31, 2008; January 6, 2009; July 31, 2009 and January 6, 2010. The Department Manager and the Coordinator also had multiple discussions with the claimant in 2009 on the importance of standard work. These conversations took place on June 2, June 3, June 8, July 1, August 21, August 26, and September 15. The Department Manager and the Coordinator issued three verbal warnings to her in 2009 and three more in 2010.

The employer has a right to review that employees can use to have a committee review the basis for termination. The claimant took advantage of that process and the Review Committee sent her a letter dated July 28, 2010 that said the conclusion was that the facts show there was ample support for corrective action. However, the Committee determined that the final incident was more appropriately characterized as a Class 2 Corrective Action for Bypassing Known/Documented Processes as opposed to a Class 1 Restricting Output. However, since this was her second Class 2 Corrective Action Letter within 24 months, it did not change the final outcome and her discharge was appropriate.

The claimant filed a claim for unemployment insurance benefits effective June 13, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on June 16, 2010 for receiving two Class-2 Corrective Action Letters within 24 months. While she denies all wrongdoing, the preponderance of the evidence establishes a solid pattern of the claimant's failure to follow processes. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 9, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw