

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRY L TURNBULL**  
Claimant

**APPEAL NO. 11A-UI-07227-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 05/08/11**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sherry Turnbull filed an appeal from a representative's decision dated May 27, 2011, reference 01, which denied benefits based on her separation from Pella Corporation. After due notice was issued, a hearing was held by telephone on July 18, 2011. Ms. Turnbull participated personally and was represented by Joseph Basque, attorney at law. Exhibits A through D were admitted on Ms. Turnbull's behalf. The employer participated by Bob Larson, human resources manager, and Bob Rasmussen, department manager. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Turnbull was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Turnbull was employed by Pella Corporation from April 18, 1994 until May 5, 2011. She was last employed full-time as a crafts person on the paint line. She was discharged pursuant to a company rule that provides for termination if an individual receives two "Class 2" corrective action notices within 24 months.

Ms. Turnbull's job required her to perform certain quality checks on parts coming off the paint line. She was to record the results of the tests and submit a verification sheet regarding her findings. She was counseled on December 2, 2010 because the required verification form was not submitted. Another individual was assisting her with the testing on this occasion and the two did not confirm with each other who was going to submit the required verification form. On April 6, 2011, Ms. Turnbull received her first "Class 2" corrective action letter because she failed to verify one test that she completed on April 4.

The decision to discharge was based on Ms. Turnbull's failure of April 27. She neglected to note whether the samples passed or failed two tests. She became distracted by other duties and forgot to complete all areas of the verification form. The employer learned of the error on Thursday, April 28, and suspended her the following Monday, May 2. The failure resulted in a second "Class 2" corrective action letter. As a result, Ms. Turnbull was discharged on May 5, 2011. She had not previously been disciplined for any matter during the course of her employment with Pella Corporation.

## **REASONING AND CONCLUSIONS OF LAW:**

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). The misconduct must be substantial in order for a disqualification to be imposed. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge does not believe Ms. Turnbull deliberately or intentionally failed to complete the paperwork necessary for her job. She was, however, negligent.

Negligence constitutes disqualifying misconduct if it is so recurrent as to manifest a substantial and intentional disregard of the employer's interests or standards. See 871 IAC 24.32(1). There were three incidents that contributed to Ms. Turnbull's discharge. The counseling in December of 2010 was due to the failure to record test results. It appears that this error was due to her belief that the person helping with the testing was going to record the test results. The corrective action letter of April 6 was due to her admitted failure to submit the verification form. She became busy and forgot, clearly an act of negligence. The failure of April 27 that resulted in the second corrective action letter was likewise an act of negligence.

Ms. Turnbull knew that she had to complete all areas of the verification form but neglected to note whether the paint passed or failed a particular test. The administrative law judge appreciates that she had other activities that required her attention on April 27. However, the amount of time it would have taken to write a "p" or "f" was negligible and was not likely to have resulted in any problems for other processes that were taking place in the work area.

Although Ms. Turnbull was negligent on April 6 and April 27, her two incidents of negligence are not sufficient to establish an intentional and substantial disregard of the employer's standards or interests. She had worked for Pella Corporation for over 15 years before receiving even a counseling regarding her performance or conduct. Her three failures regarding paperwork did not evince a willful or wanton disregard of the employer's interests. It was the employer's prerogative to discharge Ms. Turnbull. However, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated May 27, 2011, reference 01, is hereby reversed. Ms. Turnbull was discharged by Pella Corporation, but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw