BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

SCOTT J GUITER	:	
	:	**HEARING NUMBER:** 11B-UI-02296
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
PELLA CORPORATION	:	

Employer.

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Scott J. Guiter, worked for Pella Corporation from August 18, 2003 through December 17, 2010 as a full-time sharpener. (Tr. 3-4, 12) The employer has a policy that provides an employee receiving two Class #2 Correction Action letters within a 24-month period shall be terminated. (Tr. 4, 12, Claimant's Exhibits A & B).

On May 20, 2008, Mr. Guiter received a Class #2 Corrective Action for "[bending] over to place some plastic wrap around the U-board while the wrapper was still in motion…he placed his head in the line of fire of the door as it was rotating…it…hit him in the head and pushed him backwards." (Tr. 7, 10, 11, 21) The claimant disagreed with the disciplinary action because it wasn't his fault; the machine was faulty in that the pressure sensor was unhooked and it was the only way the machine would run. When he looked at the switch, the light wasn't on; he did not know the sensor was activated. (Tr. 22)

The employer offered employees a voluntary layoff package that the claimant accepted the package primarily because of his daughter's illness at the time. (Tr. 13, 23-24) He was laid off beginning December 23, 2008 through August 10, 2009. (Tr. 7-8, 12, 13) When an employee goes on layoff status, the 24-month time period for consideration of safety violations is suspended until that employee is recalled, and his time is reinstated when he returns from the point where it left off. (Tr. 8, 12)

On December 10, 2010, Mr. Guiter was sharpening a head containing 3-4 knives. He stopped to use the restroom, and upon his return, he began sharpening again. (Tr. 5) As he sharpened "…halfway across the head…the pin moved and…dug into the head…," which upset the claimant. Guiter muttered something under his breath, reached up 'open-palmed' and hit the E-stop button that automatically shuts off the machine. (Tr. 15-16) He performed the lock-out procedure, placed the keys in his pocket, so that he could change the wheel to fix the head he'd just gouged out. (Tr. 16) After doing this, he called the manager (Travis) over. As the men talked, the claimant "…inadvertently – not realizing what [he] was doing- unlocked the machine…walked back around and began to change the wheel…" (Tr. 16) When Guiter placed his hand on the wheel, Travis pointed out to him that the machine was no longer locked out. (Tr. 17) The claimant became more upset that the manager watched him unlock the machine, pull off the guard and place his hand on the wheel before he warned him that the machine was on. Mr. Guiter left for the day. (Tr. 16-17, 18) The employer terminated the claimant the following week for having two Class 2 Corrective Actions within a 24-month period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
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> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

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 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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The claimant was a long-term employee who received two Class #2 Corrective Actions purportedly within a 24-month period, which caused his termination. As to the first corrective action, Mr. Guiter provided unrefuted testimony that employees were required to run a faulty machine in order to keep wrapping doors. (Tr. 22) Although this was not a lock-out/tag-out infraction, the employer found him blameworthy just the same and wouldn't rescind the discipline from the May 20, 2008 incident. (Tr. 22)

His next violation occurred nearly two and half years later on December 10, 2010, well beyond the 24-month timeframe the employer's company policy mandates to cause a termination. However, because the employer does not count time off during a layoff toward discipline, the claimant's second infraction fell within a 24-month timeframe subjecting him to termination. While the employer may have compelling business reasons to terminate the claimant, conduct that 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).

The employer's disciplinary policy is not dispositive of the claimant's eligibility for unemployment benefits. Considering the claimant's second infraction was so far removed from his first discipline (nearly 31 months), we look more to this final incident to be determinative of the outcome of this matter. The claimant provided credible testimony that he did, in fact, initially lock-out the machine, which the employer does not refute. However, for some unknown reason, the claimant inadvertently unlocked the machine. Iowa law provides that "…inadvertencies…in isolated instances…good faith errors in judgment…are not to be deemed misconduct within the meaning of the statute." See, 871 IAC 24.32(1)"a", supra. This was Guiter only instance of a lock-out/tag-out violation. In looking at his employment record as a whole, we find that this final act was an isolated instance of poor judgment that didn't rise to the legal definition of misconduct. The employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated March 24, 2011 is **REVERSED**. The claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

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John A. Peno

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Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Monique F. Kuester

AMG/kk