

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY C TROUT**  
Claimant

**APPEAL NO. 07A-UI-00972-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 12/24/06 R: 03**  
**Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated January 16, 2007, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 12, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Carol Weidinger participated in the hearing on behalf of the employer, with witnesses Mark Zuck, Jessie Robinson, and Jill Rosendaal. The hearing was continued until February 13 at 3:00 p.m. with the agreement of the parties to take testimony from the claimant's aunt who the claimant represented would corroborate her testimony that her aunt and her mother accompanied her to Oskaloosa on December 6, 2006, where the claimant had a court appearance. The claimant was called on February 13 at the scheduled time but was unavailable. Messages left for the claimant were not returned.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as an assembler from August 16, 2004, to December 12, 2006. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. She also understood that providing false information to obtain time off was prohibited. The claimant had been warned regarding her attendance in the past.

The claimant had received approval to take intermittent Family and Medical Leave Act (FMLA) leave to care for her mother and take her to medical appointments. On the evening of December 3, 2006, the claimant called and left a message for her supervisor requesting FMLA leave for December 4 and 6 to take her mother to medical appointments. She called on the evening of December 4 and left a message stating she was reminding her supervisor that she needed December 4, 5, and 6 off for FMLA. She had not previously requested December 5 off.

The claimant had been arrested for operating a vehicle while intoxicated over the weekend of Thanksgiving. She had her initial court appearance for that offense scheduled for the morning of December 6 in Oskaloosa. The claimant's mother lives in Ottumwa, Iowa. The claimant knew that she had this court appearance when she informed that she needed to have December 6 off to care for her mother but did not mention that the reason for her absence for part of the day was that she had a court appearance. She deliberately failed to properly report the reasons for her missing work on December 6.

While the claimant attended court in Oskaloosa on the morning for December 6, her aunt stayed with and cared for her mother. The claimant was also absent from work on December 7 and 8. The employer discovered that the claimant had a court appearance on December 6 and verified with the courthouse that she attended the hearing. The employer questioned the claimant about this on December 12 and the claimant admitted that she had attended court on the morning of December 6 and her aunt was caring for her mother during the morning.

The employer suspended the claimant on December 12 and after evaluating the incident and the claimant past record, the claimant was discharged on December 21, 2006.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

The claimant's misrepresenting the reasons for her absence from on the morning of December 6, 2006, was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated January 16, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw