

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

RUSS P PARKER  
1851 – 260<sup>TH</sup> ST  
OSKALOOSA IA 52577

PELLA CORPORATION  
C/o TALX UC EXPRESS  
PO BOX 1160  
COLUMBUS OH 43216 1160

Appeal Number: 04A-UI-12617-DWT  
OC: 10/24/04 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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed a representative's November 17, 2004 decision (reference 01) that concluded Russ P. Parker (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2004. The claimant participated in the hearing. Richard Carter, a representative with TALX, appeared on the employer's behalf. Loretta Sprunk and Joel Bennett appeared on the employer's behalf as witnesses. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 24, 1995. The claimant worked as a full-time customer support specialist. Sprunk was the claimant's supervisor. The claimant understood that products employees bought at employee auctions could only be used by the employee and could not be sold or given to anyone or any charitable organization.

During his employment, the claimant bought many items at the employee auction to use in his home. The claimant started purchasing items for his home in 2001. The last time the claimant bought any item at the employee auction was May 31, 2003. During this period, the claimant bought 28 doors and 35 windows at the employee auction. The claimant used all of these items in his home.

During the last 18 months of his employment, the claimant experienced an acrimonious divorce. The claimant kept the employer apprised of the proceedings. One time, the claimant's ex-wife went into their home and took many items out of the home. The claimant's ex-wife made threats about doing something so the claimant would lose his job.

In October 2004, the employer received an anonymous letter that was postmarked from the town where the claimant's former in-laws live. The letter accused the claimant of giving away items he had purchased at the employee auction to several people and charities. The claimant's father was one of the people listed. When the employer reviewed the claimant's employee auction record, the employer became suspicious about the number of items (windows and doors) the claimant had purchased.

On October 25, the employer talked to the claimant about the items he purchased at the employee auction. When the employer asked if all the items he purchased from the employee auction would be found at his home, the claimant indicated he had not sold or given any of the items away to anyone. The claimant, however, was not certain if the employer would find all the items he had purchased in his home because he had no idea if his ex-wife gave anything to anyone. The employer concluded that with the claimant's response it would be a waste of time to go to his home to make sure he had all the items in his home. The claimant did not give or sell any items he purchased at the employee auction. The employer did not contact the claimant's father to ascertain if the allegation in the anonymous letter was accurate.

On October 25, 2004, the employer discharged the claimant. The employer concluded the claimant's comment meant he had given some of the items he purchased at the auction to other individuals. The employer considered the claimant to have committed theft of the employer's property by giving away items he purchased at the employee auction.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant after concluding he failed to keep the items he purchased at the employee auction in his home. Based on the employer's conclusion, the employer established compelling business reasons for discharging the claimant.

The evidence, however, establishes that the claimant did not sell or give any of the items he purchased at the employee auction to anyone else or to any charitable organization. If the claimant's ex-wife gave anyone any of these items, the claimant had no control over her actions. Although the claimant asked the employer to go to his home to find the items he had purchased were in his home, the employer concluded this would be a waste of time. If the employer could not find just one item, the employer would conclude the claimant had violated the employee auction rules. The employer was concerned by the claimant's comments that he could not say with certainty all of the items he purchased would be found in his home.

The evidence does not establish that the claimant intentionally or substantially violated the employee auction guidelines. The claimant did not commit work-connected misconduct. As of October 24, 2004, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's November 17, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 24, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b