

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY S SHIVES**

Claimant

**APPEAL NO. 12A-UI-10237-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**

Employer

**OC: 02/05/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Anthony Shives (claimant) appealed a representative's August 16, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Pella Corporation (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 17, 2012. The claimant participated personally. The employer participated by Julie Wolf, human resources representative; Jeff Reinier, department manager; and William Day, department manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on August 20, 2007, as a full-time Operator 3. The claimant signed for receipt of the employer's handbook on March 23, 2010. The employer has a policy which prohibits chewing tobacco while working. On November 28, June 29, July 27, August 31, 2011, the employer issued the claimant written warnings for tardiness and profanity. The employer notified the claimant that further infractions could result in termination from employment.

On July 10, 2012, the employer saw the claimant spitting chewing tobacco in the trash can. The claimant covered his mouth while the employer questioned him. The claimant denied the allegation, even though the garbage contained spit and chew. The claimant went to the bathroom. The employer asked the claimant additional questions and noticed that the claimant no longer covered his mouth and did not have a chewing tobacco container in his pocket. The employer suspended the claimant. On July 17, 2012, the employer terminated the claimant for failure to follow the employer's instructions.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding tardiness, profanity, and chewing tobacco. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's August 16, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw