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

DENNIS D PHIPPS
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NEWTON IA 50208

PELLA CORPORATION
C/O TALX SHEAKLEY UNISERVICE INC
PO BOX 160
COLUMBUS OH 43216 1160

Appeal Number: 04A-UI-11158-DWT
OC: 09/12/04 R: 02
Claimant: Appellant (2)

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, 4th 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Dennis D. Phipps (claimant) appealed a representative's October 14, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Pella Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2004. The claimant participated in the hearing. Richard Carter, a representative with TALX-Sheakley Uniservice, appeared on the employer's behalf with Ben Jauer, Lance Traster, and Mark Zuck 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 July 26, 1999. He worked as a full-time assembler. Jauer, a department manager, was his supervisor. The claimant received a copy of the employer's policy that informs employees they can be discharged if within 12 months the employee receives three corrective actions or written warnings.

During his employment, the claimant received a corrective action on April 23, 2004 for failing to work a day of mandatory overtime. The claimant called in sick on the day of mandatory overtime, but he did not go to the doctor. Since the claimant did not have a doctor's statement verifying he was ill and unable to work on a mandatory overtime day, his absence was unexcused and the employer gave him a written warning.

On June 28 and July 26, 2004, the employer talked to the claimant about quality problems the employer noticed with the claimant's products. The claimant did not trim flanges and he had bad welds. On July 28, the employer gave the claimant a corrective action or written warning for carelessness in the performance of his job. Thirty-one gaskets out of 150 to 180 gaskets the claimant had worked on had to be redone.

On September 1, there were some mechanical problems. As a result of these problems, the employer's workload slowed down. The employer offered employees the opportunity to take a 90-minute instead of a 30-minute lunch break. If employees wanted a longer lunch break, they signed their name on a sheet of paper. When Jauer explained what options the employees had, the claimant had his earplugs in and did not hear what Jauer said. The claimant understood that if he signed the paper, he could leave work early that day. The claimant signed the paper, clocked out and went home. When the claimant reported to work the next day, September 2, the employer suspended him and gave him his third corrective action or written warning.

On September 7, the employer discharged the claimant. The employer discharged the claimant because he had three corrective action forms or written warnings in a year.

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 established business reasons for discharging the claimant because he had accumulated three written warnings within a year. The claimant, however, had worked for the employer since 1999. The evidence does not indicate he had ever left work early without permission prior to September 1, 2004. If the claimant did not know what Jauer told employees, he should have asked or made sure he knew exactly what the employer wanted employees to do or what it meant to sign the paper. Even though the claimant signed his name to a paper without really knowing what had been said, the evidence does not establish that the claimant intentionally failed to work until the end of his shift on September 1. The claimant understood that when he signed his name on a piece of paper, the employer gave him permission to leave work early. The Although the claimant had received his second written warning in late July, the claimant had no reason to believe his job was in jeopardy when he left work on September 1. Under the facts of this case, the evidence does not establish that the claimant intentionally disregarded the employer's interests. The facts do not establish that the employer discharged the claimant for committing work-connected misconduct. As of September 12, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 14, 2004 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 12, 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