

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM LEACH

Claimant

APPEAL NO: 12A-UI-05296-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION

Employer

OC: 03-11-12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

Section 96.6-2 – Timeliness of Appeal

The claimant filed a timely appeal from a representatives decision dated April 6, 2012, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held before Administrative Law Judge Julie Elder on May 31, 2012. The claimant participated in the hearing. Diane Carpenter, Human Resources Representative, participated on the hearing on behalf of the employer. Department's Exhibit D-1 and Employer's Exhibits Five through 20 were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on April 6, 2012. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 16, 2012. The appeal was not filed until May 7, 2012, which is after the date noticed on the disqualification decision. The claimant testified he faxed the appeal to the Appeals Section prior to April 16, 2012, but it was not received and consequently he faxed it again May 7, 2012. Because the claimant testified he faxed the document prior to the due date, the administrative law judge must conclude the claimant's appeal is timely.

The claimant was employed as a full-time production worker for Pella Corporation from January 22, 2007 through February 28, 2012. On February 21, 2012, the claimant injured his finger and was taken to the hospital by the health services nurse because it was an OSHA recordable injury. The facilities were clean and sanitary. The claimant was notified he was subject to post accident drug testing but stated he did not feel well after he was treated so the health services nurse went to get the car and pull it around to the front of the hospital, assuming the claimant was going to submit to his drug screen but even though he knew he was expected to do so, the claimant skipped the test and went to the car. The health services nurse later realized the claimant had not taken the test but he was already gone. He called in and reported he would not be in February 22, 2012, and took the drug and alcohol test February 23, 2012. The employer has a written drug policy that informs employees of the drug testing procedures and for which drugs the employer will be testing and the hospital staff notified the claimant as well. He was given the opportunity to inform the medical review officer of any drugs he was

taking that might have an effect on the outcome of the test. The claimant tested positive for marijuana. The medical review officer notified the claimant of the outcome of the test and the claimant called the employer and asked if he could receive treatment instead of having his employment terminated but was told that was not a possibility under the employer's policy. He was then notified by certified mail, return receipt requested, of the positive result and his right to obtain a confirmatory test of the secondary sample that was taken at the time of the initial test within seven days. The claimant did not contact the employer to proceed with a subsequent test of the secondary sample. The claimant was discharged for violation of the employer's drug policy.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for disqualifying job 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 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 claimant was discharged for violation of the employer's drug and alcohol policy due to his positive drug test for marijuana. Iowa Code section 730.5 sets forth the rules by which a private company may screen its employees for use of illegal drugs. The employer has a written drug testing policy per Iowa Code section 730.5(9)(b) and tested the claimant following an OSHA recordable accident. The claimant was

advised of the drugs to be tested and was given the opportunity to advise the medical review officer of any drugs he was taking that might have affected the outcome. Iowa Code section 730.5(7)(c)(2). The test was performed during the workday at the medical office within the facility and split samples were taken at the time of collection. Iowa Code sections 730.5(6) and (7)(a-c). A medical review officer reviewed and interpreted the confirmed positive test result and notified the claimant of the positive results before reporting the results to the employer; Iowa Code section 730.5(7)(g). The claimant was notified certified mail, return receipt requested, of the positive result and his right to obtain a confirmatory test of the secondary sample. Iowa Code section 730.5(7)(i)(1) and (2). He was advised if he wanted to proceed to test the secondary sample, he needed to notify the human resources manager by mail. The employer has met the requirements of Iowa Code section 730.5. Work-connected misconduct as defined by Iowa law has been established in this case. Therefore, benefits are denied.

DECISION:

The April 6, 2012, reference 01, decision is affirmed. The claimant's appeal is timely. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs