

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY L DEVOLL

Claimant

APPEAL NO. 08A-UI-04506-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION

Employer

**OC: 04/13/08 R: 02
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Pella Corporation filed a timely appeal from the May 5, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 27, 2008. Claimant Cathy Devoll participated. Human Resources Representative Eric Johnson represented the employer and presented additional testimony through Department Manager Troy Adam. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Twelve into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cathy Devoll was employed by Pella Corporation as a full-time assembler from April 5, 2004 until April 10, 2008, when Human Resources Representative Eric Johnson and Department Manager Troy Adam discharged her for attendance. Ms. Devoll's regular work hours were 6:00 a.m. to 3:00 p.m. Mr. Adam became Ms. Devoll's immediate supervisor in January 2008.

The final absence that prompted the discharge occurred on April 8, 2008. On that date, Ms. Devoll was absent, in part, because her power had gone out during an overnight storm. Ms. Devoll's neighbors' power had also been interrupted by the storm. Ms. Devoll's young daughter woke her at 7:35 a.m. Ms. Devoll notified the employer at 7:40 a.m. by leaving a voice mail message for Mr. Adam. Ms. Devoll indicated in her message that she had been without power, but now had power. Ms. Devoll indicated that she would not be into work, but would see Mr. Adam the following day. Ms. Devoll's prior absences had been for illness properly reported to the employer. The employer's written attendance policy required that Ms. Devoll report absences prior to the scheduled start of her shift by contacting her immediate supervisor. Ms. Devoll was aware of the policy. The employer had issued attendance warnings to Ms. Devoll based on the absences due to illness properly reported.

Ms. Devoll was tardy for work on April 9. However, the employer had already made the decision to discharge her from the employment before this instance of tardiness occurred.

REASONING AND CONCLUSIONS OF 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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the

absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). A single unexcused absence is not misconduct. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

The evidence in the record establishes a final absence on April 8, 2008 that was unexcused. The loss of power was beyond Ms. Devoll's control. Ms. Devoll promptly notified the employer as soon as she awoke. Had Ms. Devoll reported for work in a timely fashion, the final absence would have been excused under the applicable law. However, Ms. Devoll made the decision not to appear for work at all because she was more than an hour late for work. The overnight power interruption did not warrant a complete day absence. The fact that Ms. Devoll decided not to appear for work at all made the absence and unexcused absence under the applicable law. The evidence establishes that the prior absences were for illness properly reported and, therefore, excused absences under the applicable law. The evidence fails to establish excessive unexcused absences.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Devoll was discharged for no disqualifying reason. Accordingly, Ms. Devoll is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Devoll.

DECISION:

The Agency representative's May 5, 2008, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css