

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA S HALLAM
Claimant

APPEAL NO. 11A-UI-10600-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 06/26/11
Claimant: Respondent (4-R)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 4, 2011, reference 01, that concluded the claimant was eligible for unemployment insurance benefits because she was scheduled to return to work on December 1, 2010, from a leave of absence but no work was available. A telephone hearing was held on September 6, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Diane Carpenter participated in the hearing on behalf of the employer with a witness, Bob Rassmussen. The record was left open for the employer to submit evidence regarding short-term disability benefits the claimant had received. The evidence marked Exhibit One was sent to the claimant for objections, but no objection was received by September 13, 2011, so Exhibit One is admitted into evidence.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as factory worker in the employer's window and door manufacturing business from November 15, 1999, to July 23, 2010.

She requested and was granted a medical leave of absence after July 23, 2010, due to problems with her neck that required cervical disc surgery. The neck problems were not work-related. The claimant applied for and received short-term disability benefits starting in August 2010 due to her disability.

The claimant was released by her doctor in early December 2010 with restrictions of no lifting over 20 pounds, no repetitive bending or twisting, no use of drills or routers, and no repetitive up and down head movements. The claimant presented this doctor's statement to the employer in early December 2010. The employer did not have any jobs with job descriptions meeting the

restrictions. The claimant was informed that she could remain on leave receiving short-term disability benefits and the claimant accepted this. On February 17, 2011, the claimant brought in a doctor's statement with the same work restrictions. The employer did not have any jobs with job descriptions meeting the restrictions. The claimant was informed that she could remain on leave receiving short-term disability benefits and the claimant accepted this. She was told that she could remain on short-term disability until July 2011 under the employer policies.

Under the employer's policy, employees can remain off work on short-term disability for one year, and then if they are not able to return to their job, their employment is terminated. In the claimant's case, the one year ended on July 24, 2011, and since the claimant was not able to performed the job duties for the work available, her employment was terminated. The claimant received short-term disability benefits through July 24.

The claimant filed a new claim for unemployment insurance benefits effective June 26, 2011, because she mistakenly believed that her termination and cut off from short-term disability was going to be at the beginning of July. The claimant filed for and received \$1,292.00 in benefits from June 26 through July 23, 2011.

Since filing for unemployment insurance benefits, the claimant has the same restrictions as in February 2011. She has been activity looking for work as a sales clerk and other jobs within her restrictions since June 26, 2011. The claimant is able to perform this type of work with her restrictions.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The unemployment rules provide that: "A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period." 871 IAC 24.22(2)j.

The claimant was on a leave of absence receiving short-term disability up until July 24, 2010. She is therefore ineligible to receive benefits through the week ending July 23, 2011.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

As of July 24, 2011, the claimant was discharged by the employer due to inability to perform her former job without restrictions. No misconduct has been proven.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work as of July 24, 2011, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 4, 2011, reference 01, is modified in favor of the employer. The claimant is ineligible for benefits from June 26, 2011, through July 23, 2011. The claimant is qualified to receive unemployment insurance benefits effective July 24, 2011, if she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css