

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH J HUFF
Claimant

APPEAL NO. 08A-UI-06558-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 06/15/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 10, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 15, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Benjamin Bergman, and a witness, Mike Smith. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a construction technician from July 14, 2003, to June 2, 2008.

On May 29, 2008, the claimant was sent to work at the employer's closed Story City facility tearing down and removing machinery. He was staying overnight at a motel at the employer's expense. Late that evening another employee, Mike Smith, accidentally dropped a beer bottle in the motel pool. When Smith and the claimant approached the desk clerk about getting a net to fish the bottle out of the pool, the desk clerk became angry and upset and told them to leave the motel.

The claimant ran into the desk clerk on his way to his room. The desk clerk was still angry and said everything that happened was on the surveillance tape. The claimant told the clerk to review the tape and he would see that the claimant had not done anything wrong. The claimant did not leave the motel because he did not do anything to justify being evicted from the premises.

Someone with the motel reported to the employer that the claimant had dropped the beer bottle in the pool and had used vulgar language toward the desk clerk, which was untrue. On June 2, 2008, the claimant was discharged based on this report.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 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).

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 substantial and 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).

The employer has not met its burden of proof. No willful and substantial misconduct has been proven in this case. The claimant and his witness testified credibly about what had happened and since the employer failed to participate in hearing, there is no evidence supporting the grounds provided for the claimant's discharge.

DECISION:

The unemployment insurance decision dated July 10, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs