IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

APRIL L PHILLIPS
Claimant

PELLA CORPORATION
Employer

APPEAL NO: 14A-UI-00542-ST

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/15/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 7, 2014, reference 01, that held she was discharged for misconduct on December 16, 2013, and benefits are denied. A telephone hearing was held on February 6, 2014. Claimant, and her Attorney Seth Baldwin participated. Julie Wolf, HR Manager, John Herd, Department Manager, and Shane McHenry, Production Manager, participated for the employer. Claimant Exhibits A and B, and Employer Exhibits 1 - 14 were received as evidence.

The hearing was recessed on February 6, and rescheduled with notice to the parties. The hearing was concluded on March 3. Claimant and Attorney Seth Baldwin participated. Julie Wolf, HR Manager, participated.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 6, 1999, and last worked for the employer as a full-time general specialist on December 11, 2013. Claimant received an employee handbook that contains the employer policy. As to corrective action procedure under Class #2: Two infractions within 24 months will usually require discharge.

The employer issued claimant a Class 2 Corrective Action letter on September 5, 2013 for mistakes due to carelessness or horseplay that affect or could affect your safety and/or safety of others. Claimant suffered a serious injury to her right hand while operating a frame clad saw on August 26, 2013. When confronted with an inability to feed a piece of clad, claimant grabbed a piece of scrap cladding to try to correct the problem. The scrap contacted the saw blade that kicked-it-out causing the injury. The employer concluded claimant should have locked-out the saw (lock-out/tag-out) to correct the machine feed and seek assistance. She was warned that

two Class 2 letters within a 24 month period will result in employment termination. Claimant signed for it on September 11.

The employer investigated a complaint about a picture taken at work of an employee/team member and its transmission to an outside, non-employee party. The employer has a workplace privacy policy that prohibits employees from taking photographs of employees working. The employer questioned claimant about the picture and she denied taking it. During an investigation, the employer believed claimant was dishonest about where she kept her cell phone and whether she knew Donald (the person to received and transmitted the photograph). Claimant told the employer Donald was a Facebook friend.

The employer believed claimant was dishonest about whether she was in the work area, where the photograph was taken and about what she was doing. The employer did not determine claimant took the photograph.

Claimant later admitted during a second investigative inquiry she had a dating relationship with Donald because she did not want anyone to know it.

The employer concluded claimant committed a Class 2 infraction for employee dishonesty in providing false investigative information. It discharged claimant on December 16 for a second Class 2 infraction within 24 months. Although claimant had received a written discipline for violation of the cell phone policy, the employer did not offer this as a reason for discharge.

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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes employer has failed to establish claimant was discharged for misconduct on December 16, 2013 for employer policy violations.

The employer policy is not determinative as to whether misconduct is established. The Class 2 infraction policy violations in this matter are unrelated. The first one is based on carelessness though claimant should have locked-out the machine to dislodge the material interference. The second infraction is for employee dishonesty. In order for carelessness to rise to the level of misconduct it must be of a recurrent nature. Claimant used poor judgment but did not deliberately the machine lock-out policy. Job disqualifying misconduct for carelessness is not established.

The employer did not take any written statement from claimant about her investigative responses. There is no evidence claimant violated the privacy policy by taking the photograph. While claimant responses about the incident circumstances might be suspect, there is no material untruthfulness related to any privacy policy violation (taking and transmitting the photograph) that could be considered a current act of misconduct.

While the employer alleges claimant was dishonest to avoid discipline, as to what it was, is not established since it is not proven claimant took the photograph. While the employer offered other disciplinary exhibit documentation about other matters, it was not offered as evidence as a reason for discharge. Job disqualifying misconduct is not established.

DECISION:

The department decision dated January 7, 2014 reference 01 is reversed. The claimant was not discharged for misconduct on December 11, 2013. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

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