

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JANNELLE M ROWE
1085 - 172ND ST
CLARINDA IA 51632-6003

PELLA CORPORATION
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-03250-SWT
OC: 02/26/06 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 14, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 12, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Donna Rowe. Rick Carter participated in the hearing on behalf of the employer with witnesses, John Smith and Rebecca Osborne. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as an assembler from December 13, 2004, to February 11, 2005. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant had received correction actions for excessive absenteeism on

June 14, 2005, and November 4, 2005. She knew she was subject to discharge if she received three corrective actions.

The employees had been instructed in January 2006 that they were allowed three weather days that would not be counted against them in terms of attendance and they were to use their judgment in deciding to come in on days with severe weather or bad road conditions.

The claimant worked until 4:00 a.m. on the morning of February 11. She knew that the employer had scheduled overtime starting at noon on February 11. She lives in the country about 40 miles from the plant. She had a very difficult time getting home due to winter weather and slick road conditions. The next day the roads around her home had not been bladed and she believed that it was not safe to drive to work that day. She called and informed the employer that she was taking a snow day. The employer decided the weather was not bad enough to justify a snow day and terminated the claimant on February 20, 2006, for missing a mandatory overtime day.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful or substantial misconduct has been proven in this case. The claimant reasonably believed that the roads to work were hazardous and took what she thought was an allowed winter weather day. There is no evidence that she abused the policy.

DECISION:

The unemployment insurance decision dated March 14, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs