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

KEVIN W HANSON
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SHENANDOAH IA 51601-2053

PELLA CORPORATION
C/O SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-06466-S2T
OC: 05/21/06 R: 01
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Kevin Hanson (claimant) appealed a representative's June 15, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Pella Corporation (employer) for wanton carelessness in performing his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2006. The claimant participated personally. The employer was represented by Richard Carter, Hearings Representative, and participated by Bob Rasmussen, First Shift Casement Department Manager, and Diane Carpenter, First Shift Human Resources Representative. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 21, 2004, as a full-time factory hourly specialist. The claimant signed for receipt of the company handbook on June 21, 2004. The handbook indicates that an employee will be terminated for three Class Three or serious infractions within a one year period. Mistakes due to carelessness or negligence are Class Three infractions. The claimant started performing on the insulated glass line in September 2004.

The employer issued the claimant a written warning for poor performance on September 22, 2005, and a written warning for failure to follow instructions on November 28, 2005. The claimant felt too pressured working second shift. He asked for a change to first shift and the employer granted the claimant's request.

The claimant began working first shift in February 2006. The claimant did not feel welcome but did not complain to anyone about the atmosphere. On March 9, 2006, the employer issued the claimant a written warning for a Class Three infraction. On April 28, 2006, the employer issued the claimant another written warning for a Class Three infraction. The claimant was not thinking and tried to insert a large piece of glass into a smaller wooden sash. The glass broke, production was delayed and orders could not be filled on time. The employer warned the claimant that further infractions could result in his termination from employment.

On May 25, 2006, the claimant again tried to insert a large piece of glass into a smaller wooden sash with the same effect. The claimant told the employer he was not thinking and made a mistake. The employer suspended the claimant on May 26, 2006. On May 29, 2006, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes he was.

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 of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The claimant acted carelessly on three occasions. He understood that he had to pay more attention to his actions and not make mistakes or he would be terminated. The claimant continued to act in a careless manner, disregarding the employer's business interests. His actions constitute misconduct. As such, he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 15, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

bas/kkf