

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

TIMOTHY J STUCK

Claimant,

and

PELLA CORPORATION

Employer.

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HEARING NUMBER: 10B-UI-11358

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Timothy J. Stuck, was employed by Pella Corporation from September 7, 1999 through July 6, 2010 as a full-time molder/operator. (Tr. 3) The employer has a strict policy that expressly prohibits the "[t]heft or removal from the premises without proper authorization of any company property or property of any other employee." (Tr. 4) This policy is contained in the employee handbook (Tr. 4, 13), which Mr. Stuck signed in acknowledgement of receipt on March 30, 2010. (Tr. 4, 6) Violation of this policy is considered a class one infraction and subjects the violator to immediate termination. (Tr. 4, 6)

On July 6th, 2010, at approximately 2:00 a.m., an employee (CC) observed another employee's (CP) truck dome light on (Tr. 11), as Mr. Stuck was entering the truck and taking out cigarettes. (Tr. 3, 4, 7-8) CC reported the incident to Darren Dieleman (production supervisor) who confronted the claimant. (Tr. 4, 5, 9) Mr. Stuck was evasive about whether or not he was in the vehicle and took the cigarette,

but he

admitted that the night was stressful and that he needed a cigarette. (Tr. 5, 7, 11-12) He also indicated that he didn't want to be fired over the incident. (Tr. 7, 12) The employer placed Mr. Stuck on suspension for stealing a cigarette from another employee's vehicle. (Tr. 9-10) He was terminated that same day. Mr. Stuck believed he was terminated because the employer intended to eliminate second shift parts processing department. (Tr. 8-9)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 NW2d 661 (Iowa 2000).

The record establishes that the employer had a policy in place regarding the theft or unauthorized removal of employee property. (Tr. 4, 6, 13) The claimant had knowledge of this policy as evidenced by his admission of his signature on that policy. (Tr. 4, 6) His testimony about going into CP's vehicle and taking a cigarette is equivocal. However, we find the employer's testimony more credible that the claimant admitted to unauthorized access to the co-worker's vehicle and taking cigarettes because he was stressed and needed one. The employer strict policy against theft/removal of private property of another employee justifiably subjected him to termination. (Tr. 4, 13) Based on the claimant's admitted knowledge of this policy, we can reasonably presume that his behavior was an intentional disregard of the employer's policy and interests. For this reason, we conclude that the employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated October 1, 2010 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for disqualifying misconduct. Accordingly, he is denied benefits until such time 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. See, Iowa Code section 96.5(2)"a".

Lastly, Iowa Code section 96.6(2) (2009) provides, in pertinent part:

...If an administrative law judge affirms a decision of the representative, or the Appeal Board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5....

Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall *not* result in an overpayment. Nor will the employer's account be charged.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv