

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

PENNY A FIELDS
1121 N WAPELLO ST
OTTUMWA IA 52501-1803

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

Appeal Number: 06A-UI-07894-HT
OC: 07/09/06 R: 03
Claimant: Respondent (2)

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
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Pella Corporation, filed an appeal from a decision dated July 28, 2006, reference 01. The decision allowed benefits to the claimant, Penny Fields. After due notice was issued, a hearing was held by telephone conference call on August 22, 2006. The claimant participated on her own behalf. The employer participated by Human Resources Representative Pam Fitzsimmons; Department Manager Curtis Head; Production Manager Joel Barrett, and was represented by Sheakley Uniservice in the person of Beverly Lamb. Exhibits One through Five were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Penny Fields was employed by Pella from March 29, 2004 until June 25, 2006. She was a full-time assembler working 4:30 p.m. until 3:00 a.m. At the time of hire, and at subsequent staff meetings, the claimant received the employer's drug testing policy. Employees may be subject to a drug test if the employer has reasonable suspicion an employee may be under the influence of drugs or alcohol. The drug policy also informs employees of their right to have a second, confirmatory test done if the initial test is positive.

On June 14, 2006, Department Manager Curtis Head and Production Manager Joel Barrett both observed the claimant while she was at work. She was lethargic, had poor concentration and dilated pupils. She was showing a disregard for safety and her work quality was inconsistent and she was observed "swaying." She was taken to Human Resources Representative Pam Fitzsimmons who notified her she was going to be taken to Pella Regional Health and given a drug and alcohol test. Ms. Fields signed a consent form and was taken to the clinic by Mr. Head and Ms. Fitzsimmons.

At the clinic she gave a urine sample which was split and sent to Kroll Laboratory for analysis. A medical review officer contacted the claimant a few days later and asked her about any medications she was taking. The test results showed positive for marijuana and she was sent a copy, which was received on June 21, 2006. Ms. Fields assumed she was fired and talked with Ms. Fitzsimmons on June 25, 2006 to ask about her last paycheck. She acknowledged she had been smoking marijuana a few days before taking the test.

The employer sent the claimant a letter by certified mail notifying her of her right to have the split sample retested, the cost of the second test, and that she would be reinstated with full back pay and reimbursed for the cost of the test if it came back negative. The letter was signed for by Sandra Kool, the landlord's spouse, and the claimant maintained she was never given the letter by Ms. Kool.

The letter notified the claimant to contact Pella within seven days of the receipt of the letter if she wished to have another test. She did not do this and the separation date was established as June 25, 2006.

Penny Fields has received unemployment benefits since filing a claim with an effective date of July 9, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of her unemployment benefits.

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 claimant has acknowledged smoking marijuana shortly before the day on which she was tested for drugs under a reasonable suspicion by her employer. This admission in and of itself means the claimant has admitted to violating the employer's drug policy which is a dischargeable offense.

Pella complied with all the requirements of Iowa Code chapter 730.5 as far as the procedures for the test, the testing and the notification. The administrative law judge acknowledges the claimant's assertion she did not get the certified letter from her landlord's spouse, but Code chapter 730.5 only requires the employer to send the notice by certified mail. It cannot be held responsible for the United States Postal Service allowing the receipt to be signed by someone not living in the apartment on the address, nor for the irresponsibility of the person accepting the letter in not providing it to the addressee.

The claimant automatically assumed she was discharged because she got the test results and knew she had been ingesting a controlled substance in violation of the company policy. She never inquired about any further action on her part or the employer's even though her options are clearly stated in the employee handbook. Ms. Fields was discharged for violation of Pella's drug policy and conduct not in the best interests of the employer. She is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in

good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of July 28, 2006, reference 01, is reversed. Penny Fields is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$2,004.00.

bgh/cs