

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

TAMMY J WALL
PO BOX 283
STATE CENTER IA 50247

PELLA CORPORATION
c/o TALX UC EXPRESS
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-02358-CT
OC: 01/30/05 R: 02
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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Pella Corporation filed an appeal from a representative's decision dated March 1, 2005, reference 01, which held that no disqualification would be imposed regarding Tammy Wall's separation from employment. After due notice was issued, a hearing was held by telephone on April 5, 2005. The employer participated by Jeff Station, Human Resources Manager, and Ryan Fulkerson, Department Manager. The employer was represented by Debbie Ansel of Talx UC Express. Ms. Wall did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Wall was employed by Pella Corporation from July 26, 2004 until January 28, 2005 as a full-time machine operator. She was discharged pursuant to a policy which provides for termination if an individual receives three corrective action letters within 12 months.

On September 14, 2004, Ms. Wall received a correction action letter regarding the quality of her work. There were no further problems with her job performance thereafter. On January 12, 2005, Ms. Wall received her second corrective action letter, this one concerning her attendance. She had missed three full days and one partial day due to illness. She had missed one day, September 2, due to personal business. She had also been late on December 1 and January 4. In addition to the corrective action letter of January 12, Ms. Wall had been informally counseled regarding attendance on September 3 and formally counseled on December 14.

Ms. Wall was absent on January 25 because her car broke down on the way to work. She was absent on January 26 because she did not have transportation to work. These two absences caused her to receive a third corrective action letter and, therefore, she was suspended from work on January 27 and discharged on January 28.

Ms. Wall has been paid a total of \$540.00 in job insurance benefits since filing her claim effective January 30, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Wall was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences. Ms. Wall was employed by Pella Corporation for seven months. During that time, she was absent for personal business on September 2. The absence is unexcused as it was due to personal reasons. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Ms. Wall had two occasions of tardiness, December 1 and January 4. The tardiness is unexcused as there was no reasonable cause for it. The two absences due to transportation issues, January 25 and January 26, are unexcused as transportation is a matter of purely personal responsibility.

Ms. Wall had a total of five periods of unexcused absenteeism during a period of seven months. The administrative law judge considers this excessive. Ms. Wall had been warned and counseled regarding her attendance. In spite of the warnings, she did not take those steps necessary to conform her attendance to the employer's expectations. For the reasons stated herein, the administrative law judge concludes that excessive unexcused absenteeism has been established by the evidence. Accordingly, benefits are denied.

Ms. Wall has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 1, 2005, reference 01, is hereby reversed. Ms. Wall was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Wall has been overpaid \$540.00 in job insurance benefits.

cfc/sc