

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ALEXANDER M CANNY**  
Claimant

**APPEAL NO: 13A-UI-04917-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 03/24/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Pella Corporation (employer) appealed a representative's April 17, 2013 decision (reference 01) that concluded Alexander M. Canny (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2013. The claimant participated in the hearing. Carrie Ottman appeared on the employer's behalf and presented testimony from two other witnesses, Kurtis Webb and Ally Stephens. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on November 8, 2004. He worked full time as a construction technician on the second shift in the employer's Pella, Iowa manufacturing and engineering plant. His last day of work was March 20, 2013. The employer suspended him on that date and discharged him on March 28, 2013. The reason asserted for the discharge was having a second class two corrective action letters within a two-year period.

On March 19 the claimant was working on some lights. Prior to starting the work he traced the conduit for the circuit the lights were on, went to that circuit box, and de-energized the circuit. He still tested the power on each light before starting work. He finished work on the first two lights in the line and then started work on the third, again testing the power on the light before starting the work. He was having problems with that light and did not finish the work before going to lunch. After lunch he returned to the work and asked for the assistance of another technician. The other technician asked if the circuit was de-energized, and the claimant

responded that it was still down when he went for lunch. The other technician still checked the power on the light, and in fact the light was powered. As it turned out, that light was on a different circuit from the rest of the line the claimant was working; the power on it was only off before lunch because one of his fellow technicians had happened to be working on the circuit to which that light was connected and so had de-energized that circuit. However, that technician had finished work on the lights on which he was working and repowered the circuit when he went to lunch. For his failure to recognize that the third light was on a different circuit that might have to separately be de-energized the employer gave the claimant a class two corrective action letter.

On January 14, 2013 the claimant had been given a first class two corrective action letter. That corrective action letter was for failure to meet the employer's quality and productivity expectations. The employer's policies provide that if an employee gets two class two corrective action letters in a 48-month period, he is subject to discharge. As a result of getting his second class two corrective action letter for the March 19 incident, the employer discharged the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his receiving his second class two corrective action letters within 48 months because of the incident on March 19, 2013. The employer has not established how the claimant knew or should have known that the third light on the string on which he was working was powered on a different circuit than the previous two in the string. Under the circumstances of this case, the claimant's failure to de-energize this

second circuit was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. While the employer may have had good cause for discharging the claimant under its disciplinary policies, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's April 17, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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