

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREGG ROBINSON**  
Claimant

**APPEAL NO: 12A-UI-04336-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 03/18/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's April 9, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because his employment separation was for nondisqualifying reasons. The claimant participated in the hearing. The employer was not called for the hearing because there was no record the employer or the employer's representative called the Appeals Section before the hearing and provided the name and phone number of the witness to contact.

After the claimant had been excused and the hearing was closed, the employer's witness contacted the Appeals Section to participate in the hearing. The witness did not have a control number. The employer's witness understood the employer's representative was to provide this information to the Appeals Section. The employer's witness was asked to contact the Employers Edge representative. This representative was then to contact the administrative law judge if the representative had a control number. If the representative had a control number, the hearing would be reopened. No one on the employer's behalf contacted the administrative law judge or the Appeals Section after May 9.

Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in October 2007. He worked as a full-time department manager. Prior to March 9, 2012 the claimant did not have any attendance problems and he did not have any recent warnings so his job was not in jeopardy.

The claimant was scheduled to work at 5:30 a.m. on March 9. He had been out partying the night before and did not wake up. A department manager called him at 7:30 a.m. to find out

why he was not at work. The claimant told the manager that he would be reporting to work. About ten minutes later the claimant sent a manager a text to let the employer know he would not be at work that day. The claimant decided he was in no condition to work that day.

The claimant was supposed to submit a completed performance evaluation for an employee by March 10. The claimant did think about going to work on Friday before the employee's shift was over to complete the evaluation. Instead, the claimant learned the employee would be in town on Saturday. He then asked the employee to meet him at the plant on Saturday so his evaluation could be completed. The claimant asked an employee to work overtime on Saturday when no one was working. The claimant did not receive a supervisor's authorization to pay this employee overtime.

On Monday, March 13, the employer told the claimant he lacked professionalism when he failed to call the employer on Friday to report he was unable to work. The employer also informed the claimant he had been unethical when he asked an employee to report to the plant on the employee's day off when no one was working and pay him overtime without the employer's authorization. The employer told the claimant that as a result of the incidents on March 9 and 10, he could either resign or the employer would discharge him. The claimant submitted his resignation on March 13, 2012.

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

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence establishes the employer initiated the employment separation by telling the claimant he could either resign or the employer would discharge him. Even though the claimant submitted a resignation notice, if he had not the employer still would have discharged him. For unemployment insurance purpose, the employer discharged the claimant.

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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant overslept on March 9 because he had been out partying the night before. Since the claimant did not have an attendance problem, the fact he did not notify the employer he would be late or was unable to work as scheduled on March 9 does not rise to the level of work--connected misconduct. The claimant used poor judgment when he sent a manager a text

about ten minutes after he initially said he would be at work. The claimant should have called management, but did not.

The claimant realized he was supposed to turn in an employee's evaluation on March 10. To meet that deadline the claimant had the employee go to work on Saturday. This resulted in the employee receiving overtime, which had not been authorized by management. Again, the claimant used poor judgment when he tried to meet a deadline to complete an evaluation. If the claimant would have contacted his supervisor, other arrangements could have possibly been made.

Since the claimant's job was not in jeopardy before March 9, what happened on March 9 and 10 does not rise to the level of work-connected misconduct. The employer discharged the claimant for justifiable business reasons, but the claimant's poor judgment does not constitute work-connected misconduct. As of March 18, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 9, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 18, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs