

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

RANDY J CRUMES
609 HIGH AVE EAST
OSKALOOSA IA 52577

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

Appeal Number: 05A-UI-05715-DWT
OC: 05/08/05 R: 03
Claimant: Respondent (1/R)

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

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed a representative's May 23, 2005 decision (reference 01) that concluded Randy J. Crumes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2005. The claimant participated in the hearing. Richard Carter, a representative with TALX, appeared on the employer's behalf with witnesses, Roger Van Wyk, the shipping department manager, and Travis Gray, the human resource representative. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 24, 2000. The claimant worked as a full-time logistics operator in the shipping department. Van Wyk was the claimant's supervisor. The employer's policy informs employees that if an employee receives three corrective actions within a year, the employer may discharge an employee upon receipt of the third corrective action. When an employee fails to report to work and does not call the employer within an hour of the start of the shift, the employee will be disciplined.

On August 24, 2004, the claimant received a corrective action because he did not report to work or call on August 21. The claimant did not call or report to work on Saturday, August 21 because the employer had not allowed him to work overtime all summer and this was overtime work. The claimant did not sign the corrective action form because he did not agree that he should be disciplined for something he could not do.

On January 6, 2005, the claimant received a formal counseling because he had not called to report he was unable to work as scheduled. On January 6, Van Wyk warned the claimant that the next time he did not call within an hour of his shift, he would receive a corrective action. On April 20, 2005, the employer gave the claimant his second corrective action for being disrespectful to a co-worker.

On April 27, the claimant worked part of the day. Before the claimant left work, the employer had an idea the claimant would be on FMLA on April 28 and 29. The claimant talked to Van Wyk on April 28 and informed him that he had a doctor's appointment later that day. When the claimant saw his doctor, the doctor restricted the claimant from working from April 28 through May 23, 2005. The employer's health services department received confirmation that the claimant was unable to work April 28 and 29.

Since the claimant was restricted from working until May 23, he completed disability paperwork to give the employer. When the claimant had been on disability before, he did not have to contact the employer. The claimant was not in town on April 29 and did not think about contacting Van Wyk to let him know he was restricted from working. On May 2, the claimant could have called the employer between 8:00 and 9:00 a.m., but instead wanted to get the disability paperwork to the employer so it could be approved. The claimant gave the employer the disability paperwork on May 2 at 10:00 a.m.

On May 3, 2005, the employer informed the claimant he was suspended because he had not notified the employer by 9:00 a.m. on May 2 that he was unable to work. The employer discharged the claimant on May 6, 2005, because the employer gave the claimant his third corrective action. The claimant received his third corrective action for failing to notify the employer by 9:00 a.m. on May 2 that he was unable to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a.

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 employer established justifiable business reasons for discharging the claimant. The claimant did not notify the employer by 9:00 a.m. on May 2 that he was unable to work until May 24. When the employer gave the claimant his third corrective action for failing to notify the employer by 9:00 a.m., the employer followed its policy and discharged the claimant.

Since the claimant did not have any attendance issues since January 6, 2005, and he honestly believed that because he had to go on disability because his doctor would not let him work until May 24, the claimant's failure to notify the employer by 9:00 a.m. on May 2 that he was unable to work, at most, amounts to a good faith error. The claimant did not intentionally disregard the employer's interests. The claimant did not commit work-connected misconduct. Therefore, as of May 8, 2005, the claimant is qualified to receive unemployment insurance benefits.

Since the claimant's doctor indicated he was restricted from working until May 24, the issue of whether the claimant was able to and available for work as of May 8 is remanded to the Department to investigate and issue a written decision.

DECISION:

The representative's May 23, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of May 8, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. An issue of whether the claimant is able to and available for work as of May 8 is remanded to the Claims Section to investigate and issue a written decision to the interested parties.

dlw/tjc