IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOSIAH A LARSON
Claimant

PELLA CORPORATION
Employer

APPEAL NO. 08A-UI-00639-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/23/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed a representative's January 11, 2008 decision (reference 01) that concluded Josiah Larson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 4, 2008. The claimant participated personally. The employer participated by Jill Rozendaal, Human Resources Representative; Greg Arnold, Production Manager; Jay Garner, Human Resources Hearings Representative; and Pam Fitzsimmons, Human Resources Representative.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 17, 2005, as a full-time Logistics Operator 2. The employer had a drug policy that allowed the employer to perform a "reasonable suspicion" drug test on any employee that the employer suspected of drug usage. The policy indicated that the employee would be suspended without pay for three days after submission of the urine sample for testing. If the test result was negative for drugs, the employer paid the employee for the three days of suspension. Workers frequently joked that this would be a good way to get three days' paid vacation.

On or about October 27, 2007, the employer received a telephone call from an anonymous female. She stated that the claimant and a co-worker attended a party where pot was smoked. The employer observed the claimant and the co-worker and developed a reasonable suspicion from their actions that they should be drug tested. The employer transported the two to a medical facility where they provided a urine sample. The employer placed the two on a three-day suspension without pay.

On October 2, 2007, negative results were received and the two returned to work. A worker told the employer that the two had discussed having a three-day paid vacation so the claimant could

move from Newton to Knoxville, Iowa. This worker had also been known to joke about wanting the three days of paid vacation for a drug test. The employer interviewed the claimant and the co-worker separately. The claimant was afraid because he had attended a party where illegal drugs were used. He did not want to give the employer information about the location or details of the party. The claimant and co-worker's stories were different with regard to where the party was located, who drove to the party and how long they were at the party. The employer told the claimant the stories were not the same. This time, the claimant told the employer the same facts as the co-worker in every regard except for who drove to the party.

The employer investigated and considered the information for about two weeks. On October 16, 2007, the employer terminated the claimant. The claimant had no prior warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service,

351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct at the hearing. It could not prove that the claimant had anything to do with the anonymous person who told the employer the claimant was at a party. It was the employer who decided that the claimant's behavior was suspicious enough to warrant a reasonable suspicion drug test. The claimant had nothing to do with the "suspicions" of the employer. The claimant did not give the employer correct information about a party he attended away from the workplace, outside of work time that did not result in a positive drug screen. This is not misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 11, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw