

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

SHADRECK A MILLER  
32966 HWY 78 #2  
OLLIE IA 52576

PELLA CORPORATION  
c/o SHEAKLEY UNISERVICE INC  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-01356-CT  
OC: 01/04/04 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Pella Corporation filed an appeal from a representative's decision dated January 29, 2004, reference 01, which held that no disqualification would be imposed regarding Shadreck Miller's separation from employment. After due notice was issued, a hearing was held by telephone on March 24, 2004. Mr. Miller participated personally. The employer participated by Pam Kroshus and Sarah Shelley, Human Resources Representatives, and Marilyn Dunham, RN. The employer was represented by Richard Carter of Sheakley Uniservice, Inc.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Miller began working for Pella Corporation on July 10, 2000 and last worked on December 12, 2003. He worked full time in production. On December 12, Mr. Miller saw his doctor and was taken off work for three to four days due to depression. He had previously been approved to use Family and Medical Leave Act time on an intermittent basis. Mr. Miller was next scheduled to work on December 15. He did not report for work or contact the employer on December 15, 16, or 17. His depression during this time did not require hospitalization. He was given medication and remained able to take care of his own needs while living alone.

On December 18, Mr. Miller left a voice mail message for his supervisor indicating that his doctor had taken him off work through December 23. The employer spoke with him on December 30. At that point, he had not submitted any statement from his doctor indicating that he was to be off work. He indicated on December 30 that he had been to the workplace on December 17 to pick up paperwork to file for disability benefits. The employer has no record of such papers having been submitted by Mr. Miller or by his doctor. Mr. Miller indicated he had spoken with a company nurse over the telephone while at the workplace on December 17. The nurse on duty at that time denied having spoken to Mr. Miller.

The employer has a written work rule, of which Mr. Miller was aware, which provides that three consecutive unreported absences will be construed as a voluntary leaving. Because of his failure to report for work or contact the employer for three days, Mr. Miller became separated from the employment effective December 18, 2003.

Mr. Miller has received a total of \$3,542.00 in job insurance benefits since filing his claim effective January 4, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Miller was separated from employment for any disqualifying reason. He was absent from work for three consecutive days without notice in violation of a known work rule. Under such circumstances, an individual is presumed to have voluntarily quit for no good cause attributable to the employer. 871 IAC 24.25(4). Mr. Miller acknowledged that he did not call on December 15 and 16 in spite of knowing that he was to report his absences. Although his doctor had taken him off work, the employer had no way of knowing this as he had not provided the employer with this information. There is no record of him having gone to the workplace on December 17. There is, however, a record of him having called his supervisor on December 18 to report that he would be absent through December 23. If he had, as he contended, told the nurse on December 17 that he would be gone through December 23, there would seemingly be no reason to contact the supervisor on December 18 to relay this same information. This suggests to the administrative law judge that he had not, in fact, made contact with anyone at work on December 17.

Mr. Miller's mental health did not prevent him from contacting his employer on the three days he was absent. He was fully aware that he had a job. He was able to attend to his own needs in spite of his depression. The evidence of record failed to establish any justification for the failure to give the employer notice of the intended absences. For the reasons stated herein, benefits are denied.

Mr. Miller has received benefits since filing his 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 January 29, 2004, reference 01, is hereby reversed. Mr. Miller was separated from employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Miller has been overpaid \$3,542.00 in job insurance benefits.

cfc/kjf