

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD D PEARCE
Claimant

APPEAL NO. 09A-UI-10660-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 02/22/09
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 21, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 11, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Amber Jaworski participated in the hearing on behalf of the employer with witnesses, Jason Bingham and Kari Colwell. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a pack-out operator from April 5, 2004, to June 23, 2009. The claimant was informed and understood that under the employer's work rules, willfully or deliberately bypassing a quality process was grounds for termination. Jason Bingham was the claimant's supervisor.

As part of the quality process, before wrapping a door the claimant was required to scan barcode documents (called travelers) to make sure the door parts conformed to the order. On January 8, 2009, a copy of a traveler for a door without handles was found in the claimant's work area. Bingham verbally warned the claimant that he was not to use a "no-handle" traveler to permit a door with handles to be wrapped because it would create a potential for quality errors if the doors had the wrong handles.

In June 2009, the claimant had a "no-handle" traveler that he was using to bypass the quality control process to allow doors to be wrapped without using the proper travelers being scanned in willful violation of the warning he had received in January. The claimant tried to conceal the traveler by taping it on the side of a desk in his work area.

On June 23, 2009, the “no-handle” traveler was found. The claimant admitted that he used the traveler to speed up the process for wrapping doors. The employer discharged the claimant for willfully bypassing a quality process.

The claimant filed for and received a total of \$1,854.00 in unemployment insurance benefits for the weeks between June 21 and August 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule and warning was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 21, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid

wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs