

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

HEATHER L GOEMAAT  
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PELLA ENTERPRISES LLC  
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Appeal Number: 06A-UI-01154-DWT  
OC: 01/01/06 R: 02  
Claimant: Appellant (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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Heather L. Goemaat (claimant) appealed a representative's January 19, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Pella Enterprises, LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 22, 2006. The claimant participated in the hearing with her attorney, Robert Conrad. The employer responded to the hearing notice. The employer's witness was called for the hearing, but she was not available to participate in the hearing. The employer did not contact the Appeals Section again to participate in the hearing. Based on the evidence, the arguments of the claimant, 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 at the business on April 4, 2003. The claimant worked as a night auditor and clerk. The claimant's shift started at 11:00 p.m. A new manager started working in June or July 2006. A new owner took over the business in November 2005.

In late November 2005, the employer gave the claimant a verbal warning for reporting to work late. On December 29, 2005, the claimant called the employer when she left for work. The claimant called to report she would be a few minutes late. The claimant left home a few minutes late because of family issues that had to be addressed before she could leave. The manager told the claimant it was all right if the claimant was a few minutes late.

The claimant did not know when she first called she would have to wait for a train that had stopped. The claimant called the employer again around 11:15 p.m. to let the employer know she could be there in 10 to 15 minutes because a train that had stopped and she could not cross the railroad tracks. The employer then told the claimant not to bother because she was discharged for reporting to work late after she had already been warned.

Prior to December 29, 2005, the claimant did not understand her job was in jeopardy. The claimant understood she would receive written warnings before the employer discharged her for attendance issues.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or

other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The facts show the claimant received a verbal warning about her attendance in November and received permission to be a few minutes late on December 29, 2005. When the employer initially gave the claimant a few extra minutes to report to work, the claimant did not know she would be delayed longer because a train had stopped, which prevented the claimant from getting to work. After the claimant realized she did not know how long the train would be stopped, she contacted the employer to report she would be later than she initially anticipated. The claimant was going to back track, take another route to work and get to work in another 10 to 15 minutes. The claimant had no idea she would be delayed by a train. Had she known about the train, she would have taken an alternative route and would not have been as late. This additional delay was beyond the claimant's control.

The employer may have had business reasons for discharging the claimant. The evidence does not, however, establish that the claimant intentionally and substantially failed to report to work on time. The claimant did not commit work-connected misconduct. As of January 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

**DECISION:**

The representative's January 19, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 1, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s