IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIAM J BLAKE
Claimant

PELLA CORPORATION
Employer

APPEAL NO: 06A-UI-08221-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/16/06 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed a representative's August 8, 2006 decision (reference 01) that concluded William Blake (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 held on August 30, 2006. The claimant participated personally. The employer was represented by Richard Carter, Unemployment Hearing Consultant, and participated by Susan Uhl, Human Resources Representative; LaVerne DeBoef, Manufacturing Training Manager; Jeff Miedema, Manufacturing Engineering Services Department Manager; and Bill Lehner, Human Resources Representative. The claimant offered one exhibit, which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

Is the claimant denied unemployment insurance benefits because he 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 April 16, 1979, as a full-time knife grinding sharpener. The claimant signed for receipt of the company handbook on September 16, 1998, January 10, 2000, and September 30, 2003. The handbook classified falsification of company records as a serious infraction.

The claimant became a driver in the employer's Vanpool program on December 16, 2003, when he signed the Driver/Coordinator Cooperative Agreement. He agreed not to use the van for personal use unless he paid $0.25 per mile. One time, the employer asked the claimant why the mileage on his Vanpool log differed for each day of the month. The claimant relayed this to a co-worker. The co-worker told the claimant he added up the mileage for the month, divided it

by the number of days in the month, and inserted that mileage figure in the daily log. The claimant thought he was entitled to a few extra miles per day as a perk. He used these accumulated miles to visit the casino in Tama or Prairie Meadows. He did not report these miles or pay the rental rate to the employer. He added it to his monthly mileage and divided the mileage over the number of days.

On May 10, 2006, the employer increased the rental rate for personal use to $0.45 per mile. The employer informed drivers they did not have to report or pay for incidental, two or three miles per day. Drivers did not need to pay rental for trips to the grocery store or to the claimant's second job at a theater.

On June 27, 2006, the claimant drove the van filled with co-workers to work. He asked the employer for a day of vacation and the employer granted his request. He drove 44 miles to Prairie Meadows. The employer discovered the claimant took the van to Prairie Meadows, saw the van in the parking lot and returned to work. At the end of the day, the claimant returned to the worksite, collected his riders and drove home.

The claimant was on vacation the week of July 2, 2006. He provided his Vanpool Daily Log to the employer on July 10, 2006. The log did not list any miles for the trip to Prairie Meadows on June 27, 2006. The employer called the claimant into the office on July 11, 2006, and questioned him about this. The claimant said he was entitled to drive where ever he wanted to drive without paying so long it was below two or three miles multiplied by the number of days in the month. The employer suspended the claimant pending investigation.

On July 14, 2006, the claimant returned to the workplace for a meeting. The claimant admitted to traveling to Prairie Meadows twice in June 2006, and a total of six times since the beginning of the year, without reporting the mileage or paying the rent on the van. The claimant also drove the van the four miles roundtrip to his second job two or three times per week. The claimant stated he forgot to list the mileage for the second trip to Prairie Meadows during the month of June 2006, and he should have paid the rental fee.

The employer terminated the claimant on July 19, 2006, for falsification of company documents.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the claimant was 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.
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> 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). Falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599,386 N.W.2d 5 (1986). An employer has a right to expect employees to conduct themselves in an honest manner. The claimant disregarded the employer's right by falsifying the employer's records regarding the mileage. The claimant admittedly had not put the correct mileage on his daily log sheet for quite some time. He admittedly drove the van six times in six months, 88 miles, without paying for the rental. He admitted that he did this because he thought he should get a perk for driving the employer's van. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
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> If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of $1,418.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 8, 2006 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of $1,418.00.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw