

**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**

**MICHAEL R JONES
702 CHURCH ST
DALLAS IA 50163**

**PELLA CORPORATION
c/o TALX UC EXPRESS
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 05A-UI-07759-CT
OC: 06/19/05 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Pella Corporation filed an appeal from a representative's decision dated July 20, 2005, reference 01, which held that no disqualification would be imposed regarding Michael Jones' separation from employment. After due notice was issued, a hearing was held by telephone on August 24, 2005. Mr. Jones participated personally. The employer participated by Travis Gray, Human Resources Representative, and Chauncey Behm, Department Manager. The employer was represented by Richard Carter of TALX UC eXpress. Exhibits One through Four were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Jones was employed by Pella Corporation from June 23, 2003 until June 21, 2005 as a full-time machine operator. He was discharged because of his attendance.

On December 4, 2004, Mr. Jones called to report that he would be late for work. However, he did not report for work or re-contact the employer regarding his intentions. He was vague concerning the reason for the absence. It appears that his parents were having some problems and he remained home to, in his words, "console" them. He did not cite a death in the family or other emergency requiring his presence in the home on December 4. Mr. Jones was counseled informally on December 9. He left work early with permission on February 10, 2005, and was again counseled regarding his attendance on February 14. On March 11, Mr. Jones was one hour late reporting for work for unknown reasons. He was again counseled on March 16.

Mr. Jones accumulated additional absences after March 16. Some of the absences were for a full day and others were due to leaving work early. The absences were due to problems he was experiencing with his back. The employer had him seen by a doctor because he was alleging the condition was work-related. The doctor confirmed that there was an injury to the back but concluded it was not work-related. Mr. Jones was counseled regarding attendance on April 13 and May 16. On June 6, he received a corrective action letter dated May 25 regarding attendance. Mr. Jones continued to miss work because of back problems after June 6. On June 15, the employer met with him with the intent of giving him his second corrective action letter. Because the dates on the letter were incorrect, he was told he would receive the letter on June 16. The decision to discharge was due to the fact that Mr. Jones was 2.5 hours late on June 16 because he overslept. Attendance was the sole reason for the discharge.

Mr. Jones has received a total of \$2,790.00 in job insurance benefits since filing his claim effective June 19, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Jones was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Absences that are for reasonable cause and are properly reported are considered excused absences. Tardiness in reporting for work is considered a limited absence from work.

The absences caused by Mr. Jones' back problems are excused, as they were for reasonable cause. They were all properly reported or he was given permission to leave early. His absence of December 4 is unexcused, as it was not properly reported and was not for reasonable cause. Although he called to say he would be late, he did not re-contact the employer to report that he would be absent rather than late. The tardiness of March 11 is unexcused as there was no reasonable cause for it. The tardiness of June 16 is unexcused, as it was due to oversleeping, which is not reasonable grounds for missing work.

The three incidents of unexcused absenteeism identified herein occurred over a period of approximately six months. Given the circumstances of this case, the administrative law judge concludes that unexcused absenteeism has been established. Mr. Jones was absent for no reasonable cause and without properly reporting the absence on December 4. Thereafter, he received at least two counselings regarding attendance before being late on March 11 and further counselings before being late on June 16. This might be a different case if the tardiness of March 11 and June 16 had been by only a few minutes. However, he was an hour late on March 11 and over two hours late on June 16. Moreover, he knew on June 15 that he was receiving another corrective action letter regarding his attendance. In spite of this, he was over two hours late the following day.

Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Mr. Jones 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 July 20, 2005, reference 01, is hereby reversed. Mr. Jones was discharged for misconduct in connection with his employment. 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. Jones has been overpaid \$2,790.00 in job insurance benefits.

cfc/kjw