

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

SCOTT B PRICE
510 N 4TH ST
TARKIO MO 64491

PELLA CORPORATION
C/O TALX UC EXPRESS
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-03762-DWT
OC 02/29/04 R 01
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, 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 are 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

STATEMENT OF THE CASE:

Scott B. Price (claimant) appealed a representative's March 23, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Pella Corporation (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 April 26, 2004. The claimant participated in the hearing. Richard Carter, a representative with TALX, appeared on the employer's behalf with Bob Larson, the human resource manager, and Jill Pirkl, the department manager, as witnesses. Based on the evidence, the arguments of the parties, 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 for the employer on March 22, 1993. He worked as a full-time facilitator. Pirkel had been his supervisor for the last three months.

The first time the claimant received any disciplinary warning during his employment was November 12, 2003. The warning was for a Class III violation, a violation the employer does consider as serious as a Class II or I violation.

On February 23, 2004, the claimant opened an electrical box on a piece of machinery. The claimant retrieved parts for a machine that were kept in the electrical box. At a distance Pirkel saw the claimant at the open electrical box and noticed he had not locked and tagged the equipment. Pirkel concluded the claimant was working with the fuses in the electrical box. When Pirkel approached the claimant, she asked if he should not have locked and tagged the machinery. She then left to report this safety violation to management. Even though the claimant is a facilitator, he was not working on the equipment and did not understand he had to lock and tag the equipment to retrieve a part that was located in the electrical box. The claimant observed other employees do the same thing he was doing and they were not disciplined.

On February 23, the employer gave the claimant a warning for a Class II violation – violating the employer's safety rules. The employer discharged the claimant on February 23, 2004 because he had the equivalent of three Class III violations within a few months, which in accordance with the employer's policy is a ground for termination. If the claimant had not received the November 12, 2003 warning for a Class III violation, the employer would not have discharged him.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

Based on the employer's disciplinary policy, the employer established business reasons for discharging the claimant. The issue in this case is whether the claimant committed work-connected misconduct. The evidence establishes the claimant did not realize the employer required him to lock and tag out equipment when he retrieved a part for the equipment that was kept in the equipment's electrical box. The claimant used poor judgment when he opened the electrical box without locking and tagging the machine. The employer even acknowledged that the claimant would not have been discharged February 23 if he had not received a written warning on November 12, 2003.

Given the claimant's long-term employment relationship with no problems, other employees have done the same thing as the claimant without any disciplinary warning, and the employer's acknowledgement the claimant would not have been discharged if had not received the November 12 warning, the evidence does not establish the claimant committed work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 23, 2004 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf