

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANE M HOVEN

Claimant

PELLA CORPORATION

Employer

APPEAL 19A-UI-07590-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/25/19

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Shane Hoven (claimant) appealed a representative's September 20, 2019, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Pella Corporation (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for November 7, 2019, in Ottumwa, Iowa. The claimant was represented by Shane Hoven, Senior, and participated personally. Shane Hoven, Senior, the claimant's father and former co-worker, and Jonathan Craig, former co-worker, participated on behalf of the claimant. The employer participated by Shayna Bruce, Human Resources Representative, and Drew Johnson, Department Manager of the Window Plant. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 4, 2018, and at the end of his employment he was working as a full-time utility technician working 3:40 p.m. to 2:10 a.m. He signed for receipt of the employer's handbook on June 4, 2018. The handbook states that an employee who receives two Class Two Infractions within twenty-four months will usually require discharge. "Bypassing known/documented procedures related to safety or quality (Standard work, work instructions, control plans SOP, TPM, etc. Including signing off on a process before tasks are completed, such as TPMs)." is a Class Two or very serious infraction.

The claimant overheard a supervisor say that if the line would slow down and it was unsafe to lift a product, a worker would receive a "three" on their audit if they did not perform the quality water test. The supervisor did not mention the policy on bypassing a quality procedure and Class Two Infractions.

The employer issued the claimant verbal warnings for bypassing known processes on April 15, May 21, and May 22, 2019. On June 7, 2019, the employer issued the claimant a Class Two corrective action letter for bypassing a known process. The claimant admitted that he did not inject the corners on May 28, 2019. The employer notified the claimant that further infractions could result in termination from employment.

Hourly, the plant does water testing on windows. A buzzer sounds to alert the designated employee that a water test is impending. On August 6, 2019, the claimant was designated to perform a water test between 4:15 and 4:45 p.m. The shift was lacking a floater and the claimant was placed at a table where he had performed the work but never worked by himself before. The claimant realized he was supposed to perform the water test and asked a co-worker to help him lift a 150-pound window. The co-worker said he was unable to help. The claimant could have called a supervisor on a "push to talk phone" or turned a light on, signaling he needed help. The claimant did neither and forgot about the water test.

Within the hour, the supervisor was alerted that the test had not been performed. The claimant realized the issue and threw his hat to the floor in frustration. The supervisor sent the claimant to another area of the plant. On August 7, 2019, the employer suspended the claimant without pay. An investigation was conducted by the employer. On or about August 16, 2019, the employer terminated the claimant by telephone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, 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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 20, 2019, decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn