IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JASON EVANS
Claimant

PELLA CORPORATION
Employer

APPEAL NO: 06A-UI-08220-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/16/06 R: 02
Claimant: Respondent (2)

Section 96 5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed an unemployment insurance decision dated August 7, 2006, reference 01, which held that Jason Evans (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2006. The claimant participated in the hearing with Attorney Sarah Wenke. The employer participated through Travis Gray, Human Resources Representative; Jason Walker, Department Manager; and employer representative Richard Carter. Employer's Exhibits One through Three were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for disqualifying misconduct?

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 employed as a full-time assembler from December 4, 2000 through July 6, 2006 when he was discharged for repeated negligence and receiving three corrective action letters within a 24-month period. Part of his job duties includes applying sealant to window frames. The employer manufactures two types of windows: a casing unit that opens to the side and an awning unit that has a horizontal opening. The awning units require putty bead to be placed underneath the sash catch assemblies that must connect with the perimeter bead. If the sealant is not applied properly, there will be water leaks which can cause two specific problems, in addition to customer dissatisfaction. The windows are made out of wood so a leaking window can cause the wood portion of the window to rot. A more serious scenario occurs when the water leaks into the framing of the house, in which place the employer is not only replacing the original window but part of the house walls. The claimant was aware of the specific job requirements and was capable of properly doing the work.

He received a Class 2 Correction Action Letter on November 2, 2004 for horseplay that could affect the safety of others. The employer has quality assurance technicians conduct daily audits to ensure a quality window is being produced. The claimant received a formal counseling report on July 19, 2005 as a result of a water test failure on one of his window units due to his failure to properly place the gasket sealant in the frame groove. After the initial failure, the auditor pulled eight more windows to test and two more failed. Another 20 windows were pulled to be checked and five more failed. The quality control department asked for an additional 20 windows to be tested and another five failed in this group. The claimant was advised to stay focused and be cautious of what he was doing.

A Class 3 Correction Letter was issued to the claimant on August 4, 2005 for continued problems with the sealant. Two windows failed the water test because the sealant was not located correctly. The quality technicians had to pull back 42 units which were the units between the last water test and the one that failed. They had to be fixed by pulling out the gaskets, rescaling the grooves, cleaning the units and reinstalling the gaskets. The claimant was advised his job was in jeopardy. The next problem occurred on March 21, 2006 when two of the claimant's co-workers advised the employer that the claimant was not performing his frame gasket water tests at the required hourly intervals. The supervisor spoke with the claimant and advised him he needed to perform these tests 100 percent of the time as required.

The final incident prompting the claimant's termination was discovered on June 29, 2006 during another audit review. The technician discovered through a failed water test that the awning unit the claimant had been working on did not have sealant under the lock catches on the frame. There were approximately three more units on the table that the claimant had just rolled that also did not have the required sealant. The technician then called units back from shipping and looked at all the units the claimant could have rolled in the last two days. An additional ten units were found to be defective without the sealant under the lock catches. The Process Change Documentation (PCD) specifically states that the sealant bead on the awning units has to be continuous under the lock catches and the claimant signed off on the PCD. The employer called the claimant into the office and questioned him about the windows. He never claimed that he had not worked on the windows and was suspended pending further review. This final incident resulted in the third corrective action letter within 24 months, which was grounds for termination and it was the fourth time the claimant had been counseled about carelessness and negligence in applying the sealant. The employer sent him a termination letter on July 3, 2006.

The claimant filed a claim for unemployment insurance benefits effective July 16, 2006 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for repeated negligence and per the progressive disciplinary policy. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The claimant now contends he did not work on the most recent defective windows, although he never mentioned this to the employer prior to the fact-finding interview. It stands to reason if he had not worked on the windows, it would have been the first statement made to the employer when questioned about negligence. The employer has met its burden by a preponderance of the evidence. The claimant's repeated negligence was a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 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.

> 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated August 7, 2006, 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 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 $2,653.00.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/cs