

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN AGNEW

Claimant

APPEAL NO. 08A-UI-03628-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION

Employer

**OC: 03/09/08 R: 01
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed an unemployment insurance decision dated April 2, 2008, reference 01, which held that Steven Agnew (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 April 29, 2008. The claimant participated in the hearing. The employer participated through Shawn Bock, Department Manager; Jeff Heuton, Human Resources Manager; and employer representative Susan Perry. 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 work-related 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 employed as a full-time general laborer from March 20, 2006 through March 11, 2008, when he was discharged for violation of a Class One policy. He was found to have willfully and deliberately disregarded quality procedures on March 6, 2008. The claimant's job consisted of applying sealant to sliding door products; he knew how and where to apply the sealant. Each assembly line has control documentation that the employee must sign to indicate they know how to properly complete the work on that line. The claimant signed the control documentation for the line on which he was working. The employer conducts hourly checks on these windows to ensure a quality product. A quality technician conducted sill water tests on some doors on which the claimant worked on March 6, 2008 and the tests failed because the sealant was missing.

The claimant was suspended pending further determination. The quality tech quarantined a total of 44 doors to check for the missing sealant. The claimant was questioned on March 7, 2008 and admitted that he failed to apply the sealant on the inner sill during a two-hour period

when he was behind on first shift. He had previously worked on second shift but reported that the first shift runs faster than second shift and he had to cut corners to keep up. There were three doors that were missing sealant and those doors had to be rebuilt. The claimant and several other employees worked on March 8, 2008 to rebuild the doors. The employer discharged the claimant on March 11, 2008. The claimant felt the termination was unfair because the doors had not been sent to customers. The employer reminded him that it was only due to the quality control tests that the doors were not sent to customers and not his voluntary admission of non-compliance.

The claimant filed a claim for unemployment insurance benefits effective March 9, 2008 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.

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 refusing to follow quality standards when working on March 6, 2008. He admittedly cut corners for a two-hour period and failed to apply silicone on the inner seal of the doors when he was running behind on first shift. The claimant's failure to apply the required sealant shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. 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 April 2, 2008, 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 \$2,082.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw