

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

KEITH A MCGUYER
903 S CLINTON ST
ALBIA IA 52531-2659

PELLA CORPORATION
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-01866-CT
OC: 01/08/06 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Pella Corporation filed an appeal from a representative's decision dated February 7, 2006, reference 01, which held that no disqualification would be imposed regarding Keith McGuyer's separation from employment. After due notice was issued, a hearing was held by telephone on March 6, 2006. The employer participated by Julie Wolf, Human Resources Representative; Ben Jauer, Department Manager; Mark Zuck, Manufacturing Manager; and Lori Schroder, Occupational Health Services Nurse. The employer was represented by Richard Carter of Talx Employer Services. Exhibits One through Six were admitted on the employer's behalf. Mr. McGuyer did not respond to the notice of hearing.

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. McGuyer was employed by Pella Corporation from August 7, 2000 until December 28, 2005. He was employed full time as an assembler. He was discharged pursuant to a company rule that provides for termination if an individual receives three "class II" corrective action letters during a 12-month period.

Mr. McGuyer received a corrective action letter on October 20, 2005 after he was absent October 13 and 14 without notice. He was given the opportunity to provide telephone records to verify that he had called but did not avail himself of the opportunity. Mr. McGuyer received a second corrective action letter on November 3, 2005 because of his attendance. In addition to other absences, he had been absent due to illness on October 28, a day that included mandatory overtime. On December 19, Mr. McGuyer told his supervisor that he would be in to work after his doctor's appointment on the morning of December 20. He called on the afternoon of December 20 to report that he would not be in because his appointment was changed to the afternoon. He called on December 21 but did not give a reason for his intended absence. He called on December 22 to report that he would be absent due to illness. On December 28, he was mailed notice that his attendance had resulted in a third corrective action letter and, therefore, he was discharged. At the time of separation, Mr. McGuyer was working from 5:30 a.m. until 4:00 p.m., Monday through Friday.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. McGuyer 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). Mr. McGuyer was discharged after he received three corrective action letters, all of which were due to his attendance. 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. Mr. McGuyer's absences of October 13 and 14 are unexcused because they were not properly reported and the evidence does not establish any good reason as to why they were not reported. The evidence does not establish a reason for the absence of December 21. The employer coded it as being due to "sick/injury." Given the fact that his absence of December 22 was reportedly due to illness, the administrative law judge is inclined to conclude that the absence of December 21 was likewise due to illness.

Mr. McGuyer's absence of December 20 was due to a medical appointment. The employer had repeatedly told him that he needed to be recertified for Family and Medical Leave Act benefits. He worked from 5:30 a.m. until 4:00 p.m., Monday through Friday. The employer knew or should have known that, more likely than not, Mr. McGuyer would have to see his doctor during work hours in order to obtain the necessary re-certification. For the above reasons, the absence of December 20 is excused. The evidence does not establish any unexcused absences after those of October 13 and 14. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. Because there was not a current act of unexcused absenteeism in relation to the discharge date, no disqualification is imposed. See 871 IAC 24.32(8).

DECISION:

The representative's decision dated February 7, 2006, reference 01, is hereby affirmed. Mr. McGuyer was discharged by Pella Corporation but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc