

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

BRET A LONG
410 W JEFFERSON ST
KNOXVILLE IA 50138

PELLA CORPORATION
c/o SHEAKLEY UNISERVICE INC
NOW TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-01352-RT
OC: 12-25-05 R: 02
Claimant: Respondent (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 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Pella Corporation, filed a timely appeal from an unemployment insurance decision dated January 27, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Bret A. Long. After due notice was issued, a telephone hearing was held on February 21, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the Notice of Appeal. Travis Gray, Human Resources Representative, and Diana Genskow, Facilitator, participated in the hearing for the employer. The employer was represented by Richard Carter of Sheakley Uniservice, Inc., now TALX Employer Services. Employer's Exhibits One through Three were admitted into evidence.

The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Three, the administrative law judge finds: The claimant was employed by the employer as a full-time Operator B from September 3, 1996, until he was discharged on December 13, 2005. The claimant was discharged for accumulating three corrective actions in a year and for violating the employer's safety policy. The employer has rules in its handbook, a portion of which appears at Employer's Exhibit One, providing that three class three infractions within twelve months would usually require discharge and providing that such infractions include excessive absenteeism or tardiness and violating safety rules or safety practices. The claimant received two corrective actions for attendance and then received, or would have received, a third corrective action for not wearing required safety equipment on November 28, 2005, but since that would have resulted in his third corrective action and because of prior violations of the employer's safety policies the claimant was discharged.

The incident that triggered the claimant's discharge occurred on November 28, 2005, when he failed to wear steel toed boots while operating a glass hoist. Among other safety equipment, the employer requires that employees operating a glass hoist wear steel-toed boots. On September 28, 2005, the claimant failed to do so. The claimant had received several warnings or disciplines for the same infraction. On July 21, 2005, and again on July 27, 2005, the claimant was given informal counselings for not wearing steel-toed boots while operating a glass hoist. On October 16, 2005, the claimant was given a formal counseling, which appears at Employer's Exhibit Two, for not wearing a hard hat. On September 28, 2005, the claimant was again given an informal counseling for not wearing his steel-toed boots while operating the glass hoist. Finally, the incident on November 28, 2005, occurred and the claimant was discharged, as shown at Employer's Exhibit Three. The claimant received a copy of the employer's policies and signed an acknowledgment therefore. Pursuant to his claim for unemployment insurance benefits filed effective December 25, 2005, the claimant has received unemployment insurance benefits in the amount of \$2,359.00 as follows: \$337.00 per week for seven weeks from benefit week ending December 31, 2005 to benefit week ending February 11, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

The employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant was discharged on December 13, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The evidence establishes that on November 28, 2005, the claimant failed to wear his steel-toed boots while operating a glass

hoist even though the steel-toed boots were required when operating the glass hoist. The evidence also establishes that the claimant had received three prior informal counselings for the same offense as well as a formal counseling, as shown at Employer's Exhibit Two, for not wearing a hard hat. This incident on November 28, 2005, as shown at Employer's Exhibit Three, was his third corrective action letter in twelve months, and according to the employer's policies, as shown at Employer's Exhibit One, a copy of which the claimant received and for which he signed an acknowledgment, three corrective action letters usually require discharge. The other two corrective actions were for attendance, but the final one was for the violation of safety policies. The claimant was discharged for violating these safety policies and accumulating three corrective action letters in one year.

The administrative law judge concludes that the claimant's failure to wear steel-toed boots on November 28, 2005, after receiving three informal counselings in a little more than four months for the same offense and a formal counseling for not wearing a hard hat, was a deliberate act or omission constituting a material breach of the claimant's duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and is, at the very least, carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct. The administrative law judge further concludes that the third corrective action letter for not wearing steel-toed boots on November 28, 2005, coupled with two prior corrective action letters, is also disqualifying misconduct.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

Iowa Code section 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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,359.00 since separating from the employer herein on or about December 13, 2005, and filing for such benefits effective December 25, 2005. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of January 27, 2006, reference 01, is reversed. The claimant, Bret A. Long, is not entitled to receive unemployment insurance benefits until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$2,359.00.

kkf/kjw