

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

DONNIE J WALKER
125 N WILLARD
OTTUMWA IA 52501

PELLA CORPORATION
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-00291-JTT
OC: 12/11/05 R: 03
Claimant: Appellant (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:

Claimant Donnie Walker filed a timely appeal from the January 6, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 25, 2006. Mr. Walker participated in the hearing. Richard Carter of TALX Employer Services represented the employer and presented testimony through Human Resource Representative Julie Wolf, Department Manager Joe Strode and Manufacturing Manager Mark Zuck. Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Donnie Walker was employed by the Pella Corporation as a full-time production worker from

September 7, 2004 until December 8, 2005, when Department Manager Joe Strode suspended him pending termination for recurrent negligence and/or carelessness.

The final incident that prompted the discharge occurred on December 7, 2005, when Mr. Walker failed to finish a "water test" on a window unit and failed to complete a quality control checklist to indicate that he had tested the unit. Mr. Walker was to select one window unit per hour and perform a "water test" to ensure the window unit was impermeable to water. The test took no more than five minutes. On December 7, Mr. Walker started the test and then returned to his production table. Mr. Walker did not return to complete the test. Another employee removed the test unit from the testing area and placed it back into production. When Mr. Walker noticed the window unit had been placed back into production he took no steps to ensure that the unit had been properly tested or that the quality control checklist had been properly completed.

On at least nine occasions between September 9 and December 7, Mr. Strode informally counseled or formally reprimanded Mr. Walker for similar carelessness and/or negligence concerning completion of his production tasks and/or proper completion of the associated quality control paperwork. Both concerns increased the risk that the employer would have to unpack a finished window unit, check the quality, and repack the unit. Both concerns increased the risk that the employer would ship a defective window unit. Department Manager Joe Strode warned Mr. Walker that such carelessness and/or negligence placed his job in jeopardy. Mr. Walker had demonstrated the ability to perform his assigned production tasks and properly complete the quality control paperwork.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Walker was discharged for misconduct in connection with the employment. It does.

Iowa Code section 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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes carelessness and/or negligence of such a degree of recurrence as to show an intentional and substantial disregard of the employer's interests or Mr. Walker's duties and obligations to the Pella Corporation. See 871 IAC 24.32(1)(a). In order to ensure the quality of its product, the employer instructed Mr. Walker to complete a quality control checklist in connection with each production task and provided Mr. Walker with appropriate training in completion of the quality control checklist. The employer's requests were reasonable, and Mr. Walker's repeated failure to follow the instructions was unreasonable.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Walker was discharged for misconduct. Accordingly, Mr. Walker is disqualified for benefits 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 employer's account shall not be charged for benefits paid to Mr. Walker.

DECISION:

The Agency representative's decision dated January 6, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged.

jt/kjw