

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN A VERROS
Claimant

APPEAL NO. 08A-UI-00326-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**OC: 12/09/07 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 a representative's December 31, 2007 decision (reference 01) that concluded Jean Verros (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 28, 2007. The claimant participated personally. The employer participated by Amber Jaworski, Human Resources Representative, and Aaron Bohn, Department Manager.

ISSUE:

The issue is whether the claimant was discharged for 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 hired on August 17, 1998, as a full-time assembler B. The claimant last signed for receipt of the employer's handbook on September 30, 2003. The employer issued the claimant a verbal warning and two written warnings for failure to properly report her absences.

On November 27, 2007, the claimant left a message for the employer between 5:30 and 6:30 a.m. The claimant said her son was ill and she needed to take Family Medical Leave that day. Co-workers suggested to the employer that the claimant took the day off for other reasons. On November 28, 2007, the employer questioned the claimant about the previous day. The claimant told the employer she took her son to Urgent Care between 6:30 and 7:30 a.m. on November 27, 2007. The employer asked the claimant to provide a doctor's note indicating the son had been seen that day. On November 28, 2007, the claimant took her son to Urgent Care between 5:45 and 8:35 p.m.

On November 29, 2007, the claimant gave the employer a note from her physician saying the claimant could not work on November 27, 2007, because her son was sick. The employer told the claimant that this was not a note that said the son was seen by a doctor that day. The

claimant requested a note from Urgent Care for November 27, 2007. Urgent Care only had record of seeing the son the evening of November 28, 2007. The claimant said Urgent Care had the date wrong and requested information again. Urgent Care responded by saying it only saw the son on November 28, 2007. The claimant admitted she had not taken her son to Urgent Care on November 27, 2007. The employer terminated the claimant on November 29, 2007, because she gave false information regarding her absence on November 27, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). As persuasive authority, the falsification of an activity log book constitutes job misconduct. Smith v. Sorensen, 222 Nebraska 599, 386 N.W.2d 5 (1986). An employer has a right to expect employees to be truthful regarding the recording of their time. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions in reporting her time. Three times prior to the final incident the claimant did not properly notify the employer of her absences. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance 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 claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's December 31, 2007 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,990.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css