

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J CASTER
Claimant

APPEAL NO. 07A-UI-02781-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 02/18/07 R: 02
Claimant: Appellant (1)

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Matthew Caster filed a timely appeal from the March 13, 2007, reference 01, decision that denied benefits and requested an in-person hearing. After due notice was issued, a hearing was held on April 2, 2007. Mr. Caster participated and presented additional testimony through his parents, Steve Caster and Becky Caster. David Williams of TALX UC eXpress represented the employer and presented testimony through Human Resources Representative Pam Fitzsimmons and Department Manager Brett Walker. Exhibits One through 10 and A were received into evidence.

ISSUE:

Whether the claimant was suspended and/or discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Matthew Caster was employed by Pella Corporation as a full-time assembly worker from August 17, 1998 until February 13, 2007, when Human Resources Representative Pam Fitzsimmons and Department Manager Brett Walker suspended him pending possible discharge. The employer discharged Mr. Caster on February 20, 2007. Mr. Caster had been assigned to the first shift.

As part of Mr. Caster's assigned production duties, Mr. Caster was required to run a quality control check on one door per hour. The employer provided Mr. Caster with several metal gauges for this purpose. Each gauge was designed to quickly assess whether the tested door conformed to quality control standards. If a gauge fit where it was supposed to, the door passed. If a gauge did not fit, the door did not pass. Mr. Caster had been performing these same assigned duties for four years. Mr. Caster had demonstrated the ability to perform his assigned quality check duties within the timeframe provided. Mr. Caster could readily discern between the various gauges to perform the required quality checks. The gauges were mounted on a "shadow board" at Mr. Caster's workstation. The "shadow" consisted of a yellow tape outline of the particular gauge, so that the gauge could readily be returned to its appropriate place. The "shadow" also made it possible to readily discern if a gauge was missing from the

“shadow board.” As part of the quality check, Mr. Caster was required to log the results of the hourly quality checks on a quality control form. Mr. Caster received appropriate training with regard to the performing and logging the hourly quality control checks.

The employer’s written work rules indicated that the employer deemed falsifying production records and/or intentional disregard of the quality control processes were each a basis for immediate discharge. Mr. Caster was aware of these work rules at all relevant times.

On October 11, 2006, Department Manager Brett Walker received a report from employee Rudi Clark that Mr. Caster was not completing his hourly quality control checks. On October 12, Mr. Walker spoke with Mr. Caster. Mr. Walker had observed Mr. Caster that day and saw Mr. Caster fill out the log form regarding the hourly quality checks without conducting the quality check at the same time. Mr. Caster assured Mr. Walker that he had just completed the hourly quality check on a door and that it was his practice to make the log entries while the subsequent door was “cycling.” Mr. Walker took Mr. Caster’s statement at face value and made no further inquiry into the matter at that time.

On February 6, employee Eric Simon notified Mr. Walker that Mr. Caster was not doing any of his hour quality checks and was just filling out the log to make it look like he had conducted the hourly checks. Mr. Walker spoke to two additional employees who worked next to Mr. Caster’s area and these two employees confirmed that Mr. Walker consistently routinely did not perform the hourly quality checks.

Prior to Mr. Caster’s shift on February 7, Mr. Walker removed one of the seven gauges from Mr. Caster’s work area to test whether Mr. Caster was performing all of the required quality checks. The employer’s policy required Mr. Caster to notify the employer if a gauge was missing. Mr. Caster was aware of the policy. Mr. Caster did not notify the employer that a gauge was missing. For each of the nine hourly quality checks that day, Mr. Caster logged that he had performed the quality check that would have required the missing gauge. When the second shift came on, the employee assigned to use the same workstation readily discerned that one of the gauges was missing and notified the employer. The employer had the second shift employee note on the quality check log sheet that the particular gauge was not available.

Prior to Mr. Caster’s shift on February 8, Mr. Walker returned the missing gauge to Mr. Caster’s workstation. During his shift, Mr. Caster reviewed the quality check log and noted the second shift employee’s note indicating that the one gauge had not been available during the second shift. Despite the fact that the gauge had been returned to the workstation, for each of his nine hourly quality checks that day, Mr. Caster left blank the log sheet area regarding the quality check that would have required that particular gauge.

On February 13, the employer interviewed Mr. Caster regarding his shifts on February 7 and 8. Mr. Caster asserted that he had appropriately completed all of the quality checks on both shifts. Mr. Caster said he must have been too busy to notice that that one gauge was missing on February 7 or that the gauge was back at the workstation on February 8. Mr. Caster indicated that he had made the log entries for both shifts. Mr. Caster indicated that he knew the appropriate procedure for reporting a missing gauge to the employer. The employer placed Mr. Caster on disciplinary suspension pending a decision regarding whether to discharge him for falsifying production records and intentionally failing to complete the quality control process.

REASONING AND CONCLUSIONS OF LAW:

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). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. 871 IAC 24.32(9).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The greater weight of the evidence in the record establishes that on both February 7 and 8, Mr. Caster intentionally failed to perform his hourly quality control duties throughout his shift and intentionally generated log entries that indicated he had in fact completed his duties. The greater weight of the evidence indicates that Mr. Caster's intentional failure to complete quality control checks and false log entries were not confined to February 7-8, but were ongoing. The evidence establishes willful and wanton disregard of the interests of the employer both through intentional conduct and through ongoing negligence.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Caster was suspended and discharged for misconduct. Accordingly, Mr. Caster 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. Caster.

DECISION:

The claims representative's March 13, 2007, reference 01, decision is affirmed. The claimant was suspended and 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs