

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHEN C KOONCE**  
Claimant

**APPEAL NO. 07A-UI-05583-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 04/29/07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Stephen C. Koonce (claimant) appealed a representative's May 24, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Pella Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2007. The claimant participated in the hearing. Richard Carter of TALX Employer Services appeared on the employer's behalf and presented testimony from three witness, Julie Wolf, Shad Wells, and Melissa Landgrebe. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 6, 2004. He worked full time as second shift machine operator at the employer's Pella, Iowa, window and door manufacturing facility. His last day of work was April 17, 2007. The employer suspended him that day and discharged him on April 30, 2007. The stated reason for the discharge was progressive discipline culminating in engaging in unsafe horseplay.

The claimant had been given warning letters on February 1, 2007 for a safety violation relating to a forklift and on March 9, 2007 for failing to report for scheduled overtime. He was aware of the employer's policy that a third event that would result in a warning within 12 months would result in discharge.

On April 17 at approximately 7:30 p.m., the claimant's supervisor, Mr. Wells, observed the claimant wearing a tightened zip tie around his neck. He informally counseled the claimant regarding this being contrary to safety provisions and about his concern that the claimant was making mistakes due to horseplay, and instructed the claimant on getting the zip tie removed. At approximately 9:45 p.m. the claimant was walking around and otherwise not being productive. He took some plastic wrap and wrapped it around his head. He commented to a coworker, Ms. Landgrebe, that Mr. Wells would not like what he was doing. Shortly thereafter, Ms. Landgrebe reported to Mr. Wells what had happened. When Mr. Wells had an opportunity a little later that night, he spoke with the claimant, who denied wrapping his head in plastic. He then started swearing, calling his coworkers "lazy dumbasses" and using the "f-word." He did indicate at that time that he was not feeling well; he had earlier indicated he had not been feeling well, but the employer was short-handed and was reluctant to let the claimant leave if he was able to work.

At the hearing, the claimant presented a doctor's note dated April 19, 2007, which indicated that on that date the claimant had been seen by his doctor for sinusitis. The note also states, "Due to his illness and his pre-existing health condition & medicines, his behavior was affected. We have discussed medicine dose adjustment for future illness. Thank you for reconsidering this issue." The claimant did not present this statement to the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

The claimant suggests that due to his not feeling well on the night of April 17, 2007, plus the medications he was taking, that his actions that night were non-volitional and therefore not intentional and not disqualifying misconduct. However, "It is only when the impairment is sufficient to deprive the individual of the ability to abstain from the . . . work lapse that the individual does not incur the disqualification for misconduct. . . ." Huntoon, supra at 448; see also, Ayersman v. Iowa Department of Job Service, 417 N.W.2d 466 (Iowa 1988). Therefore, the question in this case is not whether the claimant was sick or on medication that night or whether that that condition excuses his conduct, but rather whether the claimant's actions in the workplace that night were volitional or whether he has shown that he had such a degree of impairment from his condition that night so as to deprive him of the ability to prevent himself from his inappropriate behavior. At a minimum, the fact that the claimant was cognizant and in control enough of his choices to comment to Ms. Landgrebe that Mr. Wells would not like what he was doing indicates that his actions were volitional. The claimant has not demonstrated that he suffered from such a degree of impairment as to deprive him of the ability to choose whether or not to behave as he did in the workplace that night, which included engaging in additional horseplay only hours after being informally counseled about engaging in other horseplay. A statement (from a doctor who did not see the claimant on the day of the incident and based her statement solely on the claimant's report of the incident) that the claimant's behavior "was affected" by his health condition and medications is insufficient to show lack of volition.

The claimant's repeated horseplay and other behavior the night of April 17 after prior warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's May 24, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 17, 2007. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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