

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN B DOWNING
Claimant

PELLA CORPORATION
Employer

APPEAL 21A-UI-09244-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/19/2020
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 25, 2021, claimant, Ryan Downing, filed an appeal from the March 15, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that the employer, Pella Corporation, discharged him for conduct not in the best interest of the employer. The parties were properly notified about the hearing held by telephone on June 7, 2021. The claimant participated personally. The employer did not participate.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a metal 2 fabricator beginning on April 17, 2017, and was separated from employment on December 14, 2020, when he was discharged.

Claimant moved into the metal fabrication position in October 2020. He found the new position stressful, but felt he was learning well. On November 19, 2020, claimant was suspended pending an investigation into parts made incorrectly and falsification of documentation in order to pass quality control checks.

Claimant heard little from the employer until mid-December 2020, when he was notified that, as of November 23, 2020, he had been discharged. He appealed his discharge, but he was notified the discharge was upheld in early January 2021.

Claimant acknowledged that the parts he ran may have been bad. However, he explained that quality control checks are performed on parts that have been run at a specific interval. The parts he checked at those intervals were within specifications, and he did not falsify his quality control checks. Furthermore, claimant explained that the reason the parts were running badly was because of a loose bearing in his machine. The bearing came loose at some point during claimant's night shift, and the machine continued to run poorly until approximately noon the next

day, halfway through his successor's shift, before someone realized the issue. Claimant had never received a warning or counseling regarding quality or about his documentation prior to the incident that led to his termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871—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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

Claimant had never received a warning about quality or documentation prior to the incident that resulted in his termination. He was not given the opportunity to alter his work to conform to the employer's expectations. While dishonesty can be enough to constitute disqualifying misconduct without prior warning, the employer has not established that claimant engaged in dishonesty in this case. The employer has not carried its burden of showing that claimant engaged in disqualifying misconduct. Benefits are allowed.

DECISION:

The March 15, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Alexis D. Rowe
Administrative Law Judge

June 21, 2021
Decision Dated and Mailed

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