

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY D HOUSER**  
Claimant

**APPEAL NO. 07A-UI-01434-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA CORPORATION**  
Employer

**OC: 11/12/06 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 1, 2007, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 26, 2006. Claimant participated personally. Employer participated by Gavin Walker, TALX Hearing Representative; Amber Dezwarte, Benefits Representative; Bill Lehner, Human Resource Representative; Randy Hall, Department Manager; and Travis Gray, Human Resources Manager. Exhibit One was admitted into evidence.

**ISSUE:**

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer September 15, 2006.

Employer discharged claimant on September 15, 2006 because claimant allegedly falsified reasons for absenteeism. Claimant missed August 22, 2006, August 23, 2006, August 30, 2006 and September 7, 2006 for military training. Claimant allegedly falsified his reasons for absenteeism by indicating that training was mandatory when it was not. Claimant allegedly falsified his reasons for absenteeism by not attending military training on August 30, 2006. Claimant allegedly falsified his reasons for absenteeism by indicating that he needed to work early on September 7, 2006. Claimant did not falsify any of his reasons for absenteeism.

## 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).

871 IAC 24.32(8) provides:

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

The administrative law judge holds that the evidence has not established that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning falsification of reason for absenteeism. Claimant was informed concerning this policy.

The last incident, which brought about the discharge fails to constitute misconduct because claimant did not falsify the reason for his absences. Claimant's sworn testimony that the training was mandatory and that he attended is more credible than the hearsay offered by employer. As an issue of law, sworn testimony is more credible than hearsay. Employer relied

completely on hearsay to establish the falsifications. The hearsay is not sufficient to overcome claimant's sworn testimony concerning the reasons for absenteeism. Therefore, claimant was not discharged for an act of misconduct and as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 1, 2007, reference 02, is affirmed. Unemployment insurance benefits shall be allowed.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

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