

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT BUCHANAN
Claimant

APPEAL NO. 10A-UI-01044-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**Original Claim: 01/04/09
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Robert Buchanan (claimant) appealed an unemployment insurance decision dated January 13, 2009, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from Pella Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 2, 2010. The claimant participated in the hearing. The employer participated through Pam Fitzsimmons, Human Resources Manager; Dennis Rose, Department Manager; Phillip Rowley, Production Coordinator; and John Finn, Production Manager. Employer's Exhibits One through Four were admitted 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time raw wood processor from April 26, 1996 through December 18, 2009. He was discharged on December 21, 2009 for his third violation of the employer's lock-out/tag-out policy. The production coordinator observed the claimant's safety violation on December 18, 2009. The claimant received a Class 1 corrective action letter for his failure to lock-out and tag-out the lineal belt while working on it. He had received sufficient training and knew what this safety rule required. He admitted he did not consistently follow the policy, because he did not feel he was in danger when violating the policy and because he believed the employer failed to enforce it consistently.

The employer's corrective action procedure provides three classes of disciplinary action: Class 3, Class 2, and Class 1. A Class 3 infraction is considered serious and three Class 3 infractions within 12 months results in discharge. A Class 2 infraction is very serious and two Class 2 infractions within 24 months results in discharge. And finally, a Class 1 infraction is

considered the most serious and any infraction in this class requires immediate discharge. The claimant received a Class 3 corrective action letter on March 1, 1997 for unacceptable safety practices when he violated the two-man lockout procedure on the cutstock belt machine when he was working on it. He received a Class 2 corrective action letter on November 11, 2003 for the same safety violation. On November 8, 2003, the manufacturing manager saw the claimant under the 5/4 inline without having the inline locked out.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on December 21, 2009 for his third violation of the same safety rule. He admits failing to lock-out and tag-out the lineal belt on December 18, 2009, but did not believe that he was in any danger. The claimant had been previously warned about failing to lock-out/tag-out equipment. When questioned on December 18, 2009, the claimant stated that he had knowingly and intentionally violated the

lock-out/tag-out policy on other occasions prior to this incident. Repeated violations of a security rule may indicate substantial disregard of the employer's interests. Flesher v. Iowa Department of Job Service, 372 N.W.2d 230 (Iowa 1985). The claimant's policy violations show 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 13, 2010, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw