

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOHN D MURPHY
116 E GRANT ST
CLARINDA IA 51632

PELLA CORPORATION
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-06740-CT
OC: 06/05/05 R: 01
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Pella Corporation filed an appeal from a representative's decision dated June 21, 2005, reference 01, which held that no disqualification would be imposed regarding John Murphy's separation from employment. After due notice was issued, a hearing was held by telephone on August 2, 2005. Mr. Murphy participated personally. The employer participated by John Smith, Human Resources Representative; Steve Hatton, Department Manager; and Adam Harris, Production Facilitator. The employer was represented by Richard Carter of Talx Employer Services. Exhibits One through Six were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Murphy was employed by Pella Corporation from October 18, 2004 until June 6, 2005 as a production worker. He was discharged after he received three corrective action letters.

On March 23, 2005, Mr. Murphy received a corrective action letter because of his attendance. He had had 18 instances of absenteeism since his employment began. On June 2, he received his second corrective action letter because of attendance. He had accumulated one additional absence since the prior warning. The employer did not have evidence of absences that were for reasons other than Mr. Murphy's own illness or that of his child. The final corrective action letter concerned Mr. Murphy's conduct of June 2.

Mr. Murphy was scheduled to work until 3:00 a.m. on June 2. At approximately 1:30 a.m., when he had completed his assigned work, Adam Harris indicated that he was needed to help in a different section. Mr. Murphy refused and, therefore, Mr. Harris notified the department manager, Steve Hatton. Mr. Hatton approached Mr. Murphy and reiterated the request that he assist in the other department. Mr. Murphy again refused. Mr. Hatton reminded him that he had just received a corrective action letter earlier in the shift. Mr. Murphy still refused to comply. He indicated he did not like the way Mr. Harris stated his request. His refusal was also based on the fact that Mr. Harris had not allowed him to work in other departments based on his own requests. As a result of his continued refusal to obey a directive from supervisors, Mr. Murphy was suspended and sent home. He was later notified of his discharge in a letter dated June 6, 2005.

Mr. Murphy has been paid a total of \$1,192.00 in job insurance benefits since filing his claim effective June 5, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Murphy was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Murphy was discharged because he received three corrective action letters. Two of the letters concerned his attendance. The employer's evidence failed to establish any unexcused absences on Mr. Murphy's record. Although his attendance may not have been satisfactory to the employer, excessive unexcused absenteeism within the meaning of the Iowa Employment Security law has not been established.

Mr. Murphy's insubordination of June 2 constitutes disqualifying misconduct. He refused to help in another department despite directives from both his facilitator and department manager. An individual's failure or refusal to perform a specific task does not constitute misconduct if such failure or refusal is in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Mr. Murphy's refusal was neither for good cause nor in good faith. He knew that Mr. Harris was a supervisor and, as such, had the authority to direct his work activities. He had the opportunity to comply with the directive when told by Mr. Hatton to help in the other department. His refusal was based, in part, on the fact that he had not been allowed to work in other areas when he, himself, requested to do so. It is the

employer's prerogative to assign work based on the needs of the company. The fact that Mr. Murphy did not always work where he wanted to did not constitute good cause for his refusal of June 2. Mr. Murphy contended that Mr. Harris used profanity when directing him to work in the other department. Even if Mr. Harris had said "you're fucking going to work up here," there would not be good cause for the continued refusal after the directive was given by a different individual, Mr. Hatton.

After considering all of the evidence, the administrative law judge concludes that Mr. Murphy was discharged for disqualifying misconduct. Accordingly, benefits are denied. He has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated June 21, 2005, reference 01, is hereby reversed. Mr. Murphy was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Murphy has been overpaid \$1,192.00 in job insurance benefits.

cfc/pjs