

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM H HENRY
Claimant

APPEAL NO: 08A-UI-00752-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 04/08/07 R: 01
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

William H. Henry (claimant) appealed a representative's January 18, 2008 decision (reference 07) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Pella Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2008. The claimant participated in the hearing. Diane Carpenter and Bob Rasmussen appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 9, 2007. The employer hired the claimant to work as a full-time production worker.

During his employment, the claimant had several absences. On September 27, the employer gave the claimant a formal counseling for attendance issues. On October 17, the employer gave the claimant a written warning for on-going attendance concerns. On November 2, the employer gave the claimant his second written warning. The claimant received his second written warning after he failed to report an absence within an hour of his scheduled shift. The employer warned the claimant in early November that if he received another written warning, he could be discharged.

The claimant and other employees were laid off from work December 22 through January 1, 2008. The claimant understood from Rasmussen that he was to return to work on January 3, 2008. The employer, however, expected employees to return to work on January 2, 2008.

On January 2, the claimant drove past the employer's facility late in the day and saw cars. He then realized he should have reported to work at 5:30 a.m. that morning. The claimant did not call the employer on January 2.

On January 3, the claimant called the employer to report he was unable to work. When the claimant realized he should have reported to work on January 2, he assumed the employer would discharge him. The claimant and his girlfriend did not have anyone to take care of their child on January 3. The claimant decided he would stay home and take of their child since he probably did not have a job any longer.

On January 4, 2008, the employer discharged the claimant. The employer discharged the claimant for on-going absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew his job was in jeopardy after he received his second written warning in early November 2007. The claimant did not take reasonable steps to maintain his employment after he discovered he misunderstood the day he was to return to work from a layoff. The claimant not only failed to contact the employer immediately on January 2, he also called off on January 3 because he and his girlfriend had not made any childcare arrangements. The claimant's failure to work as scheduled on January 3 amounts to work-connected misconduct. As of December 30, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 18, 2008 decision (reference 07) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is

disqualified from receiving unemployment insurance benefits as of December 30, 2007. This disqualification continues until he 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs