

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

FELICIA F VAN DUSSELDORP  
109 OSKALOOSA ST  
PELLA IA 50219

PELLA CORPORATION  
c/o TALX UC EXPRESS  
PO BOX 1160  
COLUMBUS OH 43216 1160

Appeal Number: 05A-UI-00255-DWT  
OC: 12/05/05 R: 02  
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, 4<sup>th</sup> 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  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Pella Corporation (employer) appealed a representative's December 27, 2004 decision (reference 01) that concluded Felicia F. Van Dusseldorp (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2005. The claimant participated in the hearing. Richard Carter, a representative with TALX, appeared on the employer's behalf. Kurtis Webb, Jesse Peterson, Brad Anderson, and Mindy McCombs participated 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.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

#### FINDINGS OF FACT:

The claimant started working for the employer on May 3, 1999. The claimant worked full-time as the patio department manager. On July 3, 2003, the claimant received a written warning for failing to tell the employer the truth. On June 30, 2003, the employer asked the claimant if she had received any personal email and had gone out to lunch with a co-worker. The claimant denied this allegation until the employer provided the claimant with detailed information about both situations. The employer concluded the claimant had been dishonest to avoid discipline. As a result of this conclusion, the employer gave the claimant a July 3, 2003 warning letter. This letter informed the claimant that if she had any other violations within the next two years, the employer would discharge her.

On November 11, 2004, the claimant informed her manager she was going to a funeral for the relative of a co-worker. The claimant left work to attend the funeral. The claimant thought she knew where the funeral was being held, but discovered she did not. The claimant did not call anyone at work to find out where the funeral services were being conducted. The claimant came back to work and did not say anything to anyone. The employer assumed the claimant went to the funeral.

On November 23, the employee, whose relative passed away, talked to Webb and told him she was upset because no one from management attended the November 11 funeral. The employer tries to have someone in management attend a funeral service that affects an employee. Upon learning no one attended the funeral, the claimant's manager talked to the claimant and asked her questions about the November 11 funeral. The claimant answered his questions as though she had attended the funeral. The manager reported the results of his conversation to Anderson. When Anderson talked to the claimant, he asked the claimant if she had attended the November 11 funeral and she told him she had left to attend the funeral but had not actually gone to the funeral.

The employer discharged the claimant on November 23, 2004. The employer discharged the claimant because within 24 months she had again been dishonest in an attempt to avoid discipline.

The claimant established a claim for unemployment insurance benefits during the week of December 5, 2004. She filed claims for the weeks ending December 11, 2004, through January 8, 2005. She received a total of \$1,598.00 in benefits during these weeks.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §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 claimant knew or should have known that as of July 3, 2003, the employer expected honesty from all employees and especially from managers. While the claimant may have planned to attend the November 11, 2004 funeral, she did not. When the claimant returned to work on November 11, she may have inadvertently failed to let anyone know she did not attend the funeral because she did not know where it was located. The employer did not discharge the claimant for not attending the funeral. Instead, the employer discharged the claimant because on November 23 the claimant she failed to tell her manager she had not attended the funeral and instead provided details of the funeral as if she had attended. The claimant's answers to her managers questions on November 23 amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee, especially a manager. Since the employer had already warned the claimant about being honest in July 2003, the employer discharged her because she was again dishonest about a work-related issue. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of December 5, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending December 11 through January 8, 2005. She has been overpaid \$1,598.00 in unemployment insurance benefits.

**DECISION:**

The representative's December 27, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 5, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending December 11, 2004, through January 8, 2005. The claimant has been overpaid and must repay \$1,598.00 in benefits she received for these weeks.

dlw/sc