

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J REYNA-WILLMS
Claimant

APPEAL NO: 13A-UI-12891-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 10/20/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 13, 2013, reference 01, that held the claimant was not discharged for misconduct on October 23, 2013, and benefits are allowed. A telephone hearing was held on December 10, 2013. The claimant participated. Julie Wolf, HR Manager, Diane Carpenter, HR representative, and Kevin Poort, Production Manager, participated for the employer. Employer Exhibits 1 -16 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on March 13, 2006, and last worked for the employer as a full-time builder on October 23, 2013. He received the employer policies in an employee handbook. There is a disciplinary policy that a second class 2 infraction is grounds for termination.

The employer issued claimant a class 2 infraction warning on February 7, 2013 for bypassing known processes related to quality. He received it without making an objection. The warning let him know he could be terminated for a further class 2 infraction if one occurred in the next twenty-four months.

The employer sends its work units to another employer location. It was notified on October 4 there a substantial number of defective units that had silicone voids and improper wet-out. The employer believed the problem could have been avoided by following proper visual inspection.

Sometime in the following week, claimant and other workers were questioned about the defective units. The employer was trying to track what employees were responsible. It was comparing the work units against the date and times employees inspected them. The employer

believed the work performance matter occurred from September 30 to October 4. The employer allowed claimant to continue his work during the investigation.

The employer concluded claimant was one of five workers who failed to make the proper visual inspection that it considers a class 2 infraction. The employer suspended claimant on October 22 and discharged him effective the following day for a second class 2 infraction. Since the other employees did not have a first infraction, they were disciplined but not discharged.

Claimant received a telephone message he was discharged on October 24 and the termination letter the following day. He denies responsibility for the defective units and he denies he was involved in the visual inspection process. He made an objection to the employer corporate office about his termination.

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.

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 concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on October 23, 2013. The employer must establish the most recent incident is misconduct that occurred in conjunction with the termination.

Claimant denies personal responsibility for a failure to make a visual inspection that led to the employer sending the defective units for further processing. The employer offered sixteen exhibits and there is no tracking document that ties claimant to any defective unit. The employer had a substantial period of time to track and identify claimant as an employee who was working and failed to make the inspection on a day or date certain and it did not do so in this matter. Job disqualifying misconduct is not established due to a failure to establish a current act of misconduct.

DECISION:

The department decision dated November 13, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on October 23, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs