

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHRISTOPHER W MILLAGE**  
Claimant

**JELD-WEN INC**  
Employer

**APPEAL 14A-UI-10970-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/03/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 13, 2014 (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2014. Claimant participated. Employer participated through human resources assistant Cole Johnson and group manager Robert Gasper.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assembler and was separated from employment on September 22, 2014 after having worked a half day. Claimant attempted to find Gasper's number from another employee a few months earlier. He did not know if the number was accurate but on September 19 at 6:30 a.m. he tried to call Gasper and got voice mail. He left a message. He called again and got a message the number was not active. Then he called the first-shift call-in line since he could not reach the supervisor. His shift started at 7:00 a.m. He saw the doctor around 9:00 a.m. and was excused from work because of a strep throat diagnosis. He was released to return to work on Monday, September 22. When shown the excuse, Gasper said the doctor's note would not excuse an absence according to the employer's policy, but only demonstrated where he was. The employer has a no-fault attendance policy that treats all absences the same, regardless of reason.

Claimant had been warned in writing on September 15, 2014 about attendance. He was warned verbally on May 12, 2014 and April 3, 2014. He was also absent on September 12 (called first-shift line, child to doctor), August 28 (no recollection of no-call/no-show), August 22 (family emergency, wife to emergency room), August 12 (family emergency, wife to emergency room), July 29 (left without notice or permission after people talked about going home early and he assumed he could leave but did not check with a supervisor), July 17 (no recall of

no-call/no-show), April 30 (tardy, transportation was late), and March 21 (tardy, alarm did not go off). Claimant received and signed for the orientation attendance policy document on October 22, 2012. The reporting policy instructs employees to call their manager or leave a message, and the last resort is the call-in line. Coordinating group manager Brad Harris listens to the messages and records messages from the call-in line. Gasper asked Harris to see if there were any messages for him from the call-in line. He had no messages on his personal phone since he did not give that number out to anyone. Gasper gave the number for former group manager Todd Pringle, since he does not have a work cell phone assigned to him.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, *id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including

discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Excessive absences are not necessarily unexcused. Absences must be both excessive and unexcused to result in a finding of misconduct. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, the claimant has credibly testified that he attempted three times to report his final absence on September 19, 2014. If the employer wants employees to report absences to their manager before the call-in line, it should make arrangements for the manager to give out their number to employees. Since Gasper did not do so, it was unreasonable to expect that claimant reach him to report an absence. Harris did not participate to testify about the call-in line messages for September 19 and the employer did not provide a written log for that number on that date. Thus claimant's testimony is credible that he reported his absence on that date. Because the final absence was related to reasonably properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

**DECISION:**

The October 13, 2014 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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