

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOREN S MIKKELSON
Claimant

APPEAL NO. 09A-UI-07785-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 11/23/08
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated May 13, 2009, reference 03, that held the claimant was discharged for no misconduct on April 22, 2009, and benefits are allowed. A hearing was held on July 1, 2009. The claimant participated. Paul Murphy, Representative, Nicole Smith, HR Director, and John Harkin, Group Manager, participated for the employer. Employer Exhibits One through Twenty-one was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time general laborer from April 4, 2008 to April 21, 2009. The claimant received the employer attendance policy that provides an accumulation of eight (8) points within a calendar year beginning January 1 can result in discharge from employment.

The claimant was given one point for leaving work early (six hours) on January 2, 2009 due to illness. The claimant was given one point on March 23rd for missing work due to being with his son who was in an emergency room for medical treatment. The claimant was unable to report the absence until 11:30 a.m. to being the only parent with him though his work shift began at 7:00 a.m. The claimant suffered a non-job-related injury, a broken toe, which he reported to his employer that he would be missing work on March 26 & March 27. The claimant was given two points for the absences, and when he failed to call-in and report for work on March 30, he was given an additional point.

The claimant was issued a written warning by his supervisor on March 31 for having accumulated six points in violation of the attendance policy, and he was reminded that eight points could result in discharge.

The claimant was given one-half a point for leaving work early on April 14 for a doctor's appointment though he gave notice to the employer. The claimant was given one point for leaving work early on April 17 for a doctor's appointment though he gave notice to the employer. The claimant was given one point for failing to return from a doctor's appointment due to treatment for a job related injury on April 20, and he was discharged on April 21, 2009 for accumulating eight and one-half points in violation of the employer's attendance policy.

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(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.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on April 21, 2009, because claimant's properly reported absences due to personal or family illness does not constitute excessive "unexcused" absenteeism.

The employer absenteeism policy does not dictate whether an absence is excused or unexcused according to the Iowa Employment Security law as interpreted by the Iowa Appellate courts. Claimant's absences due to properly reported illness are excusable, and not misconduct. The claimant's missing work due to his son's emergency medical care and his late call to report, are for excusable reasons.

The claimant's failure to call-in and report for scheduled work on March 30 is inexcusable, as is his failure to return to work after his doctor's appointment on April 20. The latter incident is not as serious, because the employer knew the claimant was missing work, and it had no reasonable expectation as to when he would return. Two inexcusable absences do not constitute job disqualifying misconduct, as the absenteeism, is not excessive.

DECISION:

The decision of the representative dated May 13, 2009, reference 03, is affirmed. The claimant was not discharged for misconduct in connection with employment on April 22, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs