IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

VICTOR A BENNINGTON
Claimant

JELD-WEN INC
Employer

APPEAL NO. 07A-UI-07232-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/01/07 R: 02
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Victor Bennington filed an appeal from a representative's decision dated July 25, 2007, reference 01, which denied benefits based on his separation from Jeld-Wen, Inc. After due notice was issued, a hearing was held by telephone on August 13, 2007. Mr. Bennington participated personally. The employer participated by Eric Pederson, Production Manager, and Scott Logan, Human Resources Manager. The employer was represented by Edward O'Brien of TALX Corporation. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Bennington was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bennington was employed by Jeld-Wen, Inc. from August 6, 2001 until June 27, 2007. He was last employed full time as a door grader. He was discharged for violating the employer's safety standards.

Mr. Bennington received a written warning on November 17, 2004 after he threw an orbital sander on the floor and threw a door, almost hitting a coworker. He signed the warning. He received another warning on September 20, 2006 because he had a lit cigarette in the parking lot, which is not a designated smoking area. He refused to sign the warning. Mr. Bennington received a third warning on October 18, 2006, which was designated by the employer as his second safety infraction. On this occasion, he threw a paint board approximately ten feet. The plywood paint board was approximately 6 feet by 30 inches. The warning was signed by Mr. Bennington and advised that he would be discharged if there were any future safety violations.

The decision to discharge Mr. Bennington was prompted by an incident of June 26. Employees are required to wear safety glasses at all times when inside the plant in the production area. The glasses are to be worn from the point when the employee enters the building. On June 26, Mr. Bennington was observed entering the plant but did not have his safety glasses on. His car ashtray had spilled onto the glasses and he could not see through them. He was observed going to his work station and cleaning the safety glasses before proceeding to the morning team meeting.

He was putting on the safety glasses as he approached the meeting location. As a result of not having the safety glasses on when he entered the building, Mr. Bennington was discharged on June 27, 2007. The failure to have the glasses on was considered a safety violation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the final act that prompted the discharge constituted an act of misconduct. See 871 IAC 24.32(8). In the case at hand, Mr. Bennington's discharge was triggered by his failure to have his safety glasses on when he entered the plant on June 26.

Mr. Bennington was not actively working when he failed to have his safety glasses on. He was observed by others cleaning the glasses before he reported to his meeting. He had the glasses off solely for the purpose of cleaning them. The administrative law judge presumes that a worker would not be required to leave the building if he needed to clean his safety glasses during the course of his shift. For the above reasons, the administrative law judge concludes that the conduct of June 26 was not an act of deliberate misconduct.

There is no doubt but that Mr. Bennington committed acts of misconduct prior to June 26, 2007. The next most prior disciplinary action was on October 18, 2006, when he threw a paint board. However, this was not a current act in relation to the June 27, 2007 discharge date. The administrative law judge is not free to consider past acts of misconduct unless there is a current act of misconduct to support a disqualification from benefits.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that a current act of misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated July 25, 2007, reference 01, is hereby reversed. Mr. Bennington was discharged by Jeld-Wen, Inc. but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw