

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A BONNETT
Claimant

APPEAL NO. 08A-UI-10239-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 08/24/08 R: 02
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 27, 2008, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 12, 2008. Claimant participated. Employer participated through Mike Rummel, supervisor, Nicole Smith, and Jamie Gibson and was represented by Lucie Reed of TALX UC Express.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a full-time frame welder and worked from July 30, 2007 until August 28, 2008, when he was discharged. On August 28 he was one hour tardy because his 14-month-old son was sick and he had to take him to the hospital. He was last warned about attendance on July 30, when he was given a final verbal warning. He was warned in writing about attendance on April 25 and July 22, 2008. He was absent on February 13, due to personal problems related to his son's breathing problems, and he was in and out of the hospital a lot because he was born prematurely. On March 18 claimant was tardy after he overslept because of having worked a 16 hour shift the day before. He missed work on April 8 and 9 because he was in jail. On July 10 he was tardy because of a flat tire and on July 30 left early for a mental health appointment related to his legal issues. Claimant does not recall being in jail on August 21 but does not recall the reason for the absence. On August 26 he was three hours tardy because of his son's medical issues. These absences were in addition to three wellness days and six court appearance days. He requested family medical leave but he was not qualified for Family Medical Leave Act (FMLA) benefits because he had not yet been employed for one year.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which he was discharged was related to properly reported illness of his infant son, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The October 27, 2008, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw