

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON H BAKER
Claimant

JELD-WEN INC
Employer

APPEAL NO: 20A-UI-06916-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 17, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2020. The claimant participated in the hearing. Mark Shaw, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time laborer for Jeld-Wen from April 8, 2019 to June 10, 2019. The employer terminated his employment for attendance.

The employer assesses one attendance point for a full-day absence and one-half point for a half-day absence. Employees are terminated upon reaching six attendance points.

The claimant worked from 3:00 p.m. to 11:00 p.m. He had five attendance points as of June 5, 2019. On his way to work June 6, 2019, the claimant's alternator went out in his car and he barely made it home. He lives 40 miles from work and because he lived so far from work and left early he was able to call the employer one and one-half hours before the start of his shift to report his absence. He tried to call his supervisor and left a voicemail for him but did not receive a return phone call. He assumed his employment was terminated because he was on his last point. On June 7, 2019, he tried to call the main number but it was busy. He left a voicemail on his supervisor's answering machine and said if he still had a job he would replace his alternator but he did not want to drive the 40 miles to work just to be discharged. He called the main number again and spoke to the receptionist telling her he could not leave a message and she said she would relay the message. The employer did not return his call and the claimant believed his employment was terminated.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant experienced car problems June 6, 2019, and had to return home. He tried to report his absence to the employer and did so in a timely manner but his supervisor did not answer. He left him a voice mail but did not receive a return call. Because the claimant had five attendance points, he made the reasonable assumption that his employment was terminated

when the employer did not call him back. He called the main number the following day but it was busy and consequently he left another voicemail message for his supervisor. Again, the employer did not call him back. The employer terminated the claimant's employment because it was not aware the claimant reported his absences.

Under these circumstances, the administrative law judge finds the employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits must be allowed.

DECISION:

The June 17, 2020, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

August 17, 2020
Decision Dated and Mailed

je/mh