

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ALINE MITRI
Claimant

APPEAL NO: 18A-UI-11596-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 08/12/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 26, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 13, 2018. The claimant participated in the hearing. Jenel Cotto, 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 customer service representative for Jeld-Wen, Inc. from September 17, 2018 to November 6, 2018. She was discharged from employment due to a final incident of absenteeism that occurred on November 2, 2018.

New employees are placed on a 90 day probationary period and are allowed one absence during that time unless approved by her manager. Anything more than one absence may result in termination of employment. The claimant went home for lunch September 27, 2018, and called her manager to state she was not feeling well and would not be back that afternoon. The employer issued the claimant a verbal warning and assessed the claimant one-half point. On October 23, 2018, the claimant called and reported she was sick and would not be in that day, and received a verbal warning and was assessed one point. On October 29, 2018, the claimant was served legal papers at 7:00 a.m. She had 20 days to respond but chose to respond that day instead of going to work. She texted her manager, not realizing she texted a landline, and her manager texted her at 8:50 a.m. asking where she was and if she was going to be at work that day. The claimant responded with a text explaining the situation. The employer issued the claimant a written warning October 30, 2018. The claimant signed the warning.

Employees are allowed ten minute morning and afternoon breaks and a 30 minute lunch period. On November 2, 2018, the claimant was four minutes late in returning from her morning break; 14 minutes late in returning from her 30 minute lunch; and 16 minutes late in returning from her afternoon break for a total of 1.50 points that day alone.

The employer terminated the claimant's employment November 6, 2018, for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The employer has established that the claimant was warned October 30, 2018, that further unexcused absences could result in termination of employment and the final absences November 2, 2018, were not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The November 26, 2018, reference 02, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn