

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN W NORDYKE
Claimant

APPEAL NO. 08A-UI-04978-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**OC: 04/20/08 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a representative's decision dated May 13, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 9, 2008. Claimant did not participate. The employer participated by Edward O'Brien, Hearing Representative and witnesses, Chris Juni and Eric Pedersen. Exhibits One through Four were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from February 6, 2006 until April 18, 2008 when he was discharged for excessive absenteeism. The claimant worked as a full-time production worker and was paid by the hour.

Mr. Nordyke was on final warning when he failed to report for scheduled Saturday work on April 19, 2008 and claimant was aware that failure to report for non-compelling reason would result in his termination from employment. Mr. Nordyke provided no reason for his nonattendance that day and was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes Mr. Nordyke was discharged for misconduct in connection with the employment. It does. The evidence establishes that the claimant was aware of the company's attendance policy and had been warned by the employer that his attendance infractions were excessive and that he would be discharged upon the next attendance infraction unless a compelling reason was brought forward. The claimant was

discharged when he failed to report for required Saturday work on April 19, 2008, indicating that he was not coming to work.

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(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.

For the reasons stated herein the administrative law judge concludes that the claimant's discharge took place for misconduct. The claimant was aware that his absenteeism was considered to be excessive and the claimant failed to report for no compelling reason on April 19, 2008. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$1,041.00.

DECISION:

The representative's decision dated May 13, 2008, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided that he is otherwise eligible. The claimant overpaid unemployment insurance benefits in the amount \$1,041.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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