

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER THOMPSON**  
Claimant

**APPEAL NO. 07A-UI-03815-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 03-04-07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 6, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 1, 2007. The claimant participated in the hearing. Scott Logan, Human Resources Manager; Eric Peterson, Production Manager; and Edward O'Brien III, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

**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 packaging line worker for Jeld-Wen from October 31, 2005 to March 21, 2007. The employer's attendance policy is a no-fault policy and allows employees to accumulate nine points during a 12-month period before termination occurs (Employer's Exhibit Two). Points drop off after three months of perfect attendance (Employer's Exhibit Two). The claimant was absent due to illness March 10, 2006; absent due to car problems April 3, 2006; absent because her boyfriend was in the hospital May 5, 2006; called in July 25, 2006; absent due to illness August 17, 2006; left early for a dental appointment November 16, 2006; was late November 22, 2006; and was absent due to a sick child February 5, 2007 (Employer's Exhibit Three). On March 5, 2007, the claimant was ill and notified her supervisor. She indicated she knew she did not have any points left and asked to be allowed to use the restroom as needed. She said she would stay if she needed to because of her points situation and her supervisor sent her to the manager's office and then told her she could go home. On March 6, 2007, she was still sick but planned to go to work. She fell asleep while waiting for her uncle to pick her up and did not wake up until 8:30 a.m. or 9:00 a.m. She tried to reach Production Manager Eric Peterson but was unable to talk to him so she left a voicemail message. She made a doctor's appointment and called Mr. Peterson from the doctor's office and he told her that she would not be discharged if she provided FMLA paperwork. The claimant asked the employer to fax the paperwork to the doctor's office but her doctor determined she did not

qualify for FMLA under the stated requirements as she had the stomach flu and would not be gone at least three days. The doctor did provide a doctor's note for the claimant but she did not present it to the employer because she was told only an FMLA excuse would be accepted. The employer terminated the claimant's employment March 21, 2007, because its policy states it needs to wait two weeks in case the employee seeks another doctor's opinion (Employer's Exhibit One). On March 15, 2006, the claimant received a verbal warning after accumulating four attendance occurrences. On August 22, 2006, she received a final written warning after accumulating eight attendance occurrences and on February 7, 2007, she received a final written warning after accumulating eight attendance occurrences (Employer's Exhibit Four).

## **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 cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although the claimant exceeded the allowed number of attendance points, six of her nine points were related to the properly reported illness of herself, her children, or the hospitalization of her live-in boyfriend. While the claimant fell asleep March 6, 2007, and consequently did not report her absence in a timely manner, she was ill and did have a doctor's note for that absence, even though the employer would not accept it because the absence was not covered by FMLA. Because the final absence was related to reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The April 6, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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