

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

VICTOR A BENNINGTON

Claimant,

and

JELD-WEN INC

Employer.

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HEARING NUMBER: 07B-UI-09275

EMPLOYMENT APPEAL BOARD
DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5(2)a

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

Elizabeth L. Seiser

John A. Peno

AMG/fnv

DISSENTING OPINION OF MARY ANN SPICER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant, through his own admission, stated that there was a strong push for safety and if anyone violated the rules, they would be written up. On several occasions, the claimant willfully violated the employer's safety rules. (Tr. 13, lines 31-34; Tr. 14, lines 7 – 14 and 26 – 28)

In review of the administrative file and the employer's Exhibits 1-5, Mr. Bennington continuously violated the employer's policy within the five-year time span even though progressive disciplinary actions had been taken. A reasonable person would view the last act involving the safety glasses issues as an attempt to undermine the employer's authority since Mr. Bennington could have cleaned his safety glasses prior to walking through the entrance of plant and still been in compliance with the employer's safety rules. Yet, Mr. Bennington chose to keep his safety glasses in his hand knowing that he was on a last chance agreement and that any violation of the safety rule would be grounds for termination. According to the court in Warrell v. Iowa Department of Job Service, 356 N.W.2d 587 (Iowa App. 1984), persons who are on probation because prior bad acts do not have the same protection as other employees.

In review of the testimony of the employer's credible witnesses, there is substantial evidence in the record to support the conclusion that Bennington was discharged for repeatedly failing to follow his supervisor's repeated instructions over a period time that related to the safety policy. Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Mr. Bennington's repeated behavior was deliberate and constituted misconduct as it demonstrated a total disregard of the employer's safety policy. Therefore, this Board member would deny benefits.

Mary Ann Spicer

AMG/fnv