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

MARTIN E SIMMONS	
	HEARING NUMBER: 08B-UI-04962
Claimant,	:
	:
and	: EMPLOYMENT APPEAL BOARD
	: DECISION
JELD-WEN INC	:

Employer.

# NOTICE

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

# DECISION

### 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.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

#### DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant's situation was unfortunate; however, his absences violated the employer's point system and were excessive.

871 IAC 24.32(7) provides:

*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.

While it is understandable that unexpected circumstances arise, the employer cannot be responsible for "personal issues." For this reason, I would conclude that the claimant committed disqualifying misconduct. See, <u>Higgins v. Iowa Department of Job Service</u>, 350 N.W.2d 187 (Iowa 1984).

Monique F. Kuester

AMG/fnv