

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL SHEARER
Claimant

APPEAL NO. 10A-UI-05917-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**Original Claim: 07-26-09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 9, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 8, 2010. The claimant participated in the hearing. Chris Juni, Safety and Human Resources Manager, and Tom Kuiper, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two, and Three, 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 assembler/laborer for Jeld-Wen from August 24, 2009 to March 8, 2010. His hours were 7:00 a.m. to 3:00 p.m. The employer uses a no-fault attendance policy and allows eight attendance points in a rolling 12-month period. Termination occurs on the ninth point. Employees are assessed one point for a full day absence, one point for a partial absence of more than one hour, and one-half point for a partial absence of one minute to one hour in duration. The claimant was absent and did not provide a reason October 6, 2009; he was absent and did not provide a reason November 23, 2009; he left three hours early because his fiancé's children's daycare center was closing due to the weather and she rode with him December 8, 2009; he was absent December 16, 2009, and January 8, and 20, 2010, due to winter weather; he was absent January 22, 2010, due to illness; he was absent February 16, 2010, because he put his vehicle in a ditch; and he was tardy March 8, 2010, because he overslept, per the employer's notes, but according to the claimant his phone and wallet were stolen from an acquaintance he let stay at his home and he had to walk to a local gas station and call the police and the employer. He called the employer at 7:38 a.m. and asked if he still had a job and the employer told him he was discharged from his employment. The claimant received a final written warning February 17, 2010, after accumulating eight

points. The warning stated that if he received another unexcused absence prior to October 6, 2010, his employment would be terminated.

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:

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.

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). While four of the claimant's absences were due to weather, he was aware of the commuting distance when he accepted the position and, consequently, he had a responsibility to leave earlier or make arrangements to make it to work in inclement weather or accept he would be assessed points for his absences. Alternatively, if the roads were truly impassable, he could have provided proof that at least the state highways were closed through the State Highway Patrol's website. Two of the claimant's absences were for unknown reasons and one was due to illness. One was due to his fiancé's childcare center closing at noon due to weather when she rode with him to work and another was due to putting his vehicle in the ditch. All but the absence due to illness were unexcused. The final absence, either due to the claimant oversleeping or having his cell phone and wallet stolen, was also unexcused. If he did not oversleep, he did not offer a good cause reason for why he did not call the employer prior to 7:38 a.m., given the fact he would have had to leave before 7:00 a.m. due to the commuting distance. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The April 9, 2010, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw