

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L COOPER
Claimant

APPEAL NO. 08A-UI-08809-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 01/20/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jeld-Wen, Inc. filed an appeal from a representative's decision dated September 25, 2008, reference 08, which held that no disqualification would be imposed regarding William Cooper's separation from employment. After due notice was issued, a hearing was held by telephone on October 16, 2008. Mr. Cooper participated personally. The employer participated by Chris Juni, Safety/Human Resources Manager, and was represented by Boyd Rogers, Corporate Counsel. Exhibits One through Four were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Cooper was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cooper was employed by Jeld-Wen, Inc. from December 10, 2007 until September 1, 2008. He was employed full time as a general laborer. He was discharged because of his attendance. The employer tracks attendance on a point system. An individual is subject to discharge when he accumulates more than eight attendance points. Mr. Cooper had in excess of eight points at the time of separation.

Mr. Cooper had periods of absenteeism on February 29, March 10, April 9, April 11, May 1, and May 7, 2008. He was absent the full day on some occasions. On other occasions, he either reported to work late or left work early. The employer was unable to identify specific occasions on which he reported to work late. He never left work early without checking with a supervisor. Mr. Cooper sustained a work-related injury to his left wrist on July 18, 2008. He had four absences between May 7 and August 20 but they were all excused by the employer.

As of August 13, 2008, Mr. Cooper was limited in the use of his left arm but had unlimited use of his right arm. For approximately two weeks, he attempted to work on the specialty line where he could work on doors at a slower pace. He found he was unable to perform the job because it

required two hands. He missed time from work on August 20 and August 22 because of pain in his arm. He was absent on August 25 but did not call to report the absence.

Mr. Cooper reported to work on August 26 and was assigned to watch safety videos. He found that watching the monitor caused discomfort in his left arm and neck. The employer then assigned him to pick up trash outside. He complained that this task also caused pain. Therefore, he was sent home for the remainder of his shift. On August 27, he was again assigned to watch safety videos. The employer had made adjustments in the monitor in an effort to eliminate the cause of Mr. Cooper's discomfort. When he still complained of pain, he was again sent home by the supervisor.

Mr. Cooper was given a written warning on August 28 which advised that he had ten attendance points. He was told he would be discharged if he missed any further time from work before December 10, 2008. On August 29, the employer again assigned Mr. Cooper to watching safety videos. He was at work approximately 45 minutes before complaining of pain. He told the supervisor he intended to go home. He was told he would accumulate points if he left but he left anyway. As a result of the absence of August 29, he was notified of his discharge when he reported to work on September 1, 2008. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. 871 IAC 24.32(7). The administrative law judge is not bound by the employer's designation of an absence as unexcused. Before a disqualification may be imposed, the evidence must establish that the discharge was based on a current act of unexcused absenteeism.

Mr. Cooper's last unexcused absence was that of August 25 when he failed to give notice of his intent to be absent. The administrative law judge finds the absences thereafter to be for reasonable cause. Mr. Cooper was credible in his testimony concerning the pain he experienced in his left arm in spite of being assigned light-duty work. He was sent home by the employer on August 26 and 27 because of his complaints of pain. He left at his own initiative on August 28 and 29 due to pain. The fact that Mr. Cooper knew he would receive attendance points if he left early does not alter the fact that he was unable to work due to pain. Inasmuch as the absences after August 25 were for reasonable cause and were with notice to the employer, they are considered excused.

The administrative law judge concludes that the absence of August 25 was not a current act in relation to the discharge that occurred a week later on September 1. Mr. Cooper did have unexcused absences prior to August 25. Those absences caused by matters related to his child are unexcused as absences caused by matters of purely personal responsibility are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Although past acts of misconduct may be considered in determining the magnitude of a current act of misconduct, a disqualification from benefits must be based on a current act. 871 IAC 24.32(8). Since the employer failed to establish a current act of misconduct, Mr. Cooper's past unexcused absences cannot form the basis of a disqualification from benefits.

The administrative law judge does not dispute the employer's prerogative to discharge Mr. Cooper. While the employer may have had good cause to discharge in line with its attendance policy, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated September 25, 2008, reference 08, is hereby affirmed. Mr. Cooper was discharged by Jeld-Wen, Inc. but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs