

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE VAN BAALE
Claimant

APPEAL NO: 08O-UI-05896-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 01-27-08 R: 02
Claimant: Respondent (2)

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 employer filed a timely appeal from the April 17, 2008, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 15, 2008. The claimant participated in the hearing. Chris Juni, Safety/Human Resources Manager; Troy Dillon, Production Manager; and Marty Young, Employer's Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through 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 builder for Jeld-Wen from September 24, 2007 to March 13, 2008. He worked the 11:00 p.m. to 7:00 a.m. shift. The claimant was absent October 5, 2007, because his wife was in the hospital. That was not counted as an excused absence. He left two hours early October 18, 2007, because his wife was having problems with her pregnancy. That was not counted as an excused absence. He was absent October 30 to December 12, 2007, because his mother was in the hospital. The employer counted those days as excused absences. On December 13, 2007, he worked one and one-half hours before leaving and then went home to take care of his mom. That was not counted as an excused absence. On January 14 2008, he worked 5 hours before leaving to take care of his pregnant wife who had fallen. That was not counted as an excused absence. On February 6 and 7, 2008, he called in because he could not drive in the weather conditions in his vehicle. Those absences were not counted as excused. On February 12, 14, and 27, 2008, the claimant chose to use all of his wellness hours. On February 28, 2008, he stayed home with his wife and newborn daughter because his daughter stopped breathing and on February 29, 2008, they took his daughter to the hospital. Those absences were not considered excused. On March 14,

2008, the claimant took his daughter to the hospital but did not provide a reason for his absence when calling in to the employer. That absence was not considered excused. (Employer's Exhibit One). The claimant received a verbal written warning February 11, 2008, upon accumulating four occurrences; a final written warning March 5, 2008, upon accumulating eight occurrences; and was terminated March 13, 2008, upon exceeding eight occurrences (Employer's Exhibit 2).

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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). The employer made exceptions for the claimant when his mother was in the hospital and also accommodated his request to move from second shift to third shift in January 2008. The claimant did not tell the employer about his daughter's illness or show the employer medical documentation. He wanted to stay home with his wife and their newborn because his wife was panicking and he worked nights and slept one-half the days he was home. The employer's attendance allows eight occurrences in a rolling 12-month period. While the claimant was absent all or parts of 12 days due to weather-related issues or personal family issues, the employer tried to accommodate his many absences since he did not qualify for FMLA but finally was unable to do so any longer. 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 because the claimant did not tell the employer the reasons for his absence or provide a doctor's excuse for his absence. Consequently, the final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 17, 2008, reference 02, decision is reversed. 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. The claimant is overpaid benefits in the amount of \$2,096.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs