

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN L ASTELLE
Claimant

APPEAL NO: 13A-UI-12885-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 10/27/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 14, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the December 10 hearing. Tom Evorsky and Brian Mecum appeared as witnesses on the claimant's behalf. Gayle Kingery and Jody Sundvold, the maintenance manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 1999. He worked as a full-time maintenance technician. Sundvold supervised the claimant.

During the course of his employment, the claimant reported safety issues to the employer. He became frustrated when the employer did nothing to address his concerns. Co-workers understood the employer planned to end the claimant's employment after a dispatcher indicated there was going to be a big change in the maintenance department and a long-time first shift employee was going to be let go. Even though the employer had talked to the claimant about the use of a radio a month or two earlier, the claimant's job was not in jeopardy prior to October 24, 2013.

On October 24, 2013, a dispatcher told Sundvold that the claimant refused to repair a machine the dispatcher asked him to repair. When the dispatcher contacted the claimant about repairing a machine, the claimant had just finished repairing another machine and started his lunch break late. He told the dispatcher he would work on the machine when he was done with his lunch.

After receiving the dispatcher's report, Sundvold went to the break room and saw the claimant. He told the claimant that he needed to work on the machine. The claimant responded that he

would as soon as he finished his break. After the claimant told Sundvold that he was on his lunch break, Sundvold left but indicated the two of them would talk later.

After the claimant finished his lunch, he went to Sundvold's office because he realized Sundvold had been upset. When the claimant and Sundvold talked, Sundvold told the claimant that he heard a rumor that claimant told an employee he wished the employer would fire him. After the claimant admitted he made this comment, Sundvold told him he was giving the claimant what he wanted and told the claimant that he was letting him go.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a). \

The evidence indicates the claimant was a frustrated and disgruntled employee. He was frustrated when the employer did not appear to take any of his reported safety concerns seriously. Even though he heard rumors that the employer was going to discharge him, his job was not in jeopardy.

On October 24, the claimant did not refuse to repair a machine. When the dispatcher contacted him about repairing a machine, he had just finished repairing a machine and was taking a late lunch. The claimant understood the employer required employees to take a lunch break. The claimant told Sundvold he would repair the machine after he finished his lunch break. Realizing Sundvold was upset, the claimant went to Sundvold's office to resolve the situation. After the claimant acknowledged he told an employee that he wished the employer would discharge him, Sundvold did not ask why. He just told the claimant that what he wanted was granted and discharged the claimant by telling him the employer was letting him go.

The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of October 27, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's November 14, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of October 27, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css