

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONYA L TEETER
Claimant

APPEAL NO. 10A-UI-15829-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 12/20/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 8, 2010, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 7, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Gail Kingery participated in the hearing on behalf of the employer with a witness, Tom Halpin. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a production employee for the employer from August 2, 2010, to October 5, 2010. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they had more than two attendance occurrences during their 90-day probation.

The claimant was sick and unable to work September 28 and 29 and provided proper notice of her absence. She was warned on October 4, 2010, that she would be terminated if she was absent again.

The claimant's life partner cared for her two children while the claimant worked a night-shift job. The children are five and six years old, and both are special needs children with psychological problems and medication to administer.

On October 6, 2010, the claimant's life partner left the home and the claimant had no one else to watch her children during her work shift. The claimant called during the day and informed a supervisor about what had happened. The supervisor told her to try to find someone to watch her children and notify her immediate supervisor. The claimant tried but was unsuccessful in

arranging for someone else to watch her children overnight. She called her immediate supervisor but had left a voice mail letting him know she was going to be absent.

On October 8, 2010, the employer informed the claimant that she was discharged for excessive absenteeism under the employer policy for probationary employees.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 the employer may have been justified in discharging the claimant based on its policy, work-connected misconduct as defined by the unemployment insurance law has not been established. Her absences were due to illness and other reasonable grounds and they were properly reported. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated November 8, 2010, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs