

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A CRAWFORD
Claimant

APPEAL NO. 12A-UI-01886-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**OC: 12/25/11
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, David Crawford, filed an appeal from a decision dated February 13, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 13, 2012. The claimant participated on his own behalf. The employer, Jeld-Wen, participated by General Manager Bill O'Dell and was represented by TALX in the person of Richard Miller.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits and whether he is able and available for work.

FINDINGS OF FACT:

David Crawford was employed by Jeld-Wen from October 31, 2005 until January 10, 2012 as a full-time machine operator. The claimant injured his shoulder in a fall at his home in early July 2011. He was off work on medical leave of absence beginning July 14, 2011.

In November 2011 he was released with a restriction not to lift any weight at all and on December 28, 2011, he was released with a five-pound lifting restriction and no repetitive pushing, pulling or lifting, no lifting above shoulder height and no reaching above the head with the right arm. The employer had no work available within those restrictions. The claimant, however, does have past work experience working in a mail room sorting mail which would not have violated any of these restrictions.

By January 10, 2012, the claimant had been off work for six months and still had not been released to return to work without restrictions. He was discharged in a letter from General Manager Bill O'Dell.

Mr. Crawford was released to return to work without restrictions effective February 15, 2012, and re-hired on March 1, 2012.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The claimant was discharged because he was not able to return to work without restrictions within six months of the beginning of his medical leave of absences. There is no misconduct and disqualification may not be imposed.

The claimant has established there was some sort of work he was able to do after filing his claim for benefits but prior to being fully released to return to work. He is able and available for work.

DECISION:

The representative's decision of February 13, 2012, reference 01, is reversed. David Crawford is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs