

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY MILLER
Claimant

APPEAL NO. 07A-UI-04450-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 03-15-07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 23, 2007, 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 May 16, 2007. The claimant participated in the hearing. Scott Logan, Human Resources Manager and Edward O'Brien, Employer Representative, participated in the hearing on behalf of the employer.

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 cart stocker for Jeld-Wen from February 6, 2006 to March 26, 2007. The employer's attendance policy is a no-fault attendance policy and employees are discharged upon accumulating eight occurrences. Final written warnings were issued to the claimant when she reached 2 occurrences within the 90-day probation period; a final written warning after accumulating 8.25 points; and a final written warning and termination March 24, 2007, for accumulating 9.5 points. The claimant was absent due to illness May 1, 2006; called without providing a reason May 9, 2006; had to leave early because of sick child May 19, 2006; called in sick May 30, 2006; called in without providing a reason June 14, 2006; called in sick June 19, 2006; called in without providing a reason July 18, 2006; left work early November 28, 2006, because her child was sick; was absent pending FMLA paperwork that did not come through November 29, 2006; and was 25 minutes late March 26, 2007, because her car battery was dead and she needed to find someone to jump her car, and the employer terminated her employment for exceeding the allowed number of attendance points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Seven of the claimant's absences were due to the illness of herself or her child and the final absence was due to a dead battery, a situation that could happen to anyone without warning. The claimant brought a doctor's note for her first few absences but was told the employer did not accept doctor's excuses and, consequently, she stopped bringing them to the employer. Additionally, the claimant exceeded the allowed number of attendance points prior to the termination but was not discharged at that time, for whatever reason, whether it is lax bookkeeping or a lag in bookkeeping or the fact the employer wanted to keep the claimant as an employee. While the claimant violated the employer's attendance policy, the employer violated it as well, and because the majority of the claimant's absences were due to the properly reported illness of herself or her child, the administrative law judge cannot conclude her absences were excessive as defined by Iowa law. Therefore benefits are allowed.

DECISION:

The April 23, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw