

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Lemke was employed by Jeld-Wen, Inc. from July 25, 1994 until February 3, 2005. He worked full time as a laborer. Mr. Lemke was discharge because of his attendance. An individual may accumulate five attendance occurrences during a rolling 12-month period before being subject to discharge.

Mr. Lemke was absent on July 22 and 23, 2004 for unknown reasons. Both absences were properly reported. On September 15, 2004, he was absent without calling in. He properly reported the intent to be absent due to illness on September 30, 2004. The final absences that caused the discharge were on January 30 and 31, 2005. The absences were due to illness and were properly reported. Mr. Lemke had been warned that his attendance was jeopardizing his continued employment. Because the absences of January 30 and 31 caused him to exceed five attendance occurrences, Mr. Lemke was discharged on February 3, 2005. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Lemke was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Absences that are for reasonable case and are properly reported are considered excused absences.

Mr. Lemke had six absences between July 22, 2004 and the date of discharge. The absence of September 15 is unexcused as it was not properly reported and the evidence does not establish any justification for the failure to report. The remaining absences that caused Mr. Lemke's discharge were due to illness and were properly reported. Therefore they are considered excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

It was within the employer's prerogative to discharge Mr. Lemke for his violation of the attendance standards. However, conduct that might be grounds for discharge will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that the employer has failed to establish disqualifying misconduct. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated September 21, 2005, reference 01, is hereby affirmed. Mr. Lemke was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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