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

THOMAS A O'BRIEN
Claimant

APPEAL NO. 10A-UI-06326-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**Original Claim: 03/21/10
Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 14, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 14, 2010. The claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Thomas A. O'Brien.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a door inspector for the employer. He had worked for the employer since September 1997. On or about March 15, 2010, the claimant was diagnosed with the flu and was taken off work by his doctor. The claimant got Family Medical Leave Act (FMLA) papers from the employer and he turned those papers in on March 25, 2010. The claimant had been released to return to work on March 29, 2010. On March 26, 2010, the employer called the claimant and told him he was terminated.

REASONING AND CONCLUSIONS OF LAW:

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(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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The employer did not participate in the hearing and therefore there is no evidence of misconduct. The claimant did miss work due to illness. That illness was properly reported to the employer and the claimant had a slip from his doctor saying that the claimant could return to work on March 29, 2010. The claimant was terminated on March 26, 2010. Since there is no evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 14, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw