

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MATTHEW STEVENS
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JELD-WEN INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07041-ET
OC: 06-11-06 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 29, 2006, reference 01, 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 August 2, 2006. The claimant participated in the hearing. Troy Dillion, Production Manager; Richard Wood, Safety and Human Resources Manager; and Jacqueline Jones, Employer's Representative, participated in the hearing on behalf of the employer.

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 press operator for Jeld-Wen from March 13, 2006 to May 12, 2006. The claimant was on a 90-day attendance probation period after being rehired by the employer. On March 15, 2006, he received a verbal warning after calling to report he would not be in because he had a cold. On May 9, 2006, he received a final written warning after calling in to report he would be absent due to stomach problems. On May 10, 2006, the claimant provided the employer with paperwork stating he had an 8:00 a.m. appointment for an ultrasound on his stomach to check for gallbladder problems. His supervisor told him to come in before the appointment and after talking to the employer the claimant asked his physician if he could take the test at 3:00 p.m., which the doctor was able to accommodate but the claimant did not have an opportunity to tell the employer of the change in appointment. On May 11, 2006, the claimant went into work at his regularly scheduled time, before his 3:00 p.m. appointment, but the employer terminated his employment for violation of the attendance policy the morning of May 12, 2006.

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.

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). 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). The claimant was absent March 15, 2005 due to having a cold; absent May 9, 2006 due to having stomach issues; and would have possibly had

to leave early May 11, 2006 due to having an ultrasound on his gallbladder at 3:00 p.m. The claimant did miss two days between March 13 and May 12, 2006, but the evidence is not clear that he would have been absent or left early for his ultrasound May 11, and the employer's evidence does not establish that the claimant was absent May 11. Because the final absence for which the claimant was discharged was related to a properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The June 29, 2006, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/cs