

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANA S ELLIS**  
Claimant

**APPEAL NO. 08A-UI-10847-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 09/21/08 R: 02  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Shana Ellis filed an appeal from a representative's decision dated November 6, 2008, reference 01, which denied benefits based on her separation from Jeld-Wen, Inc. After due notice was issued, a hearing was held by telephone on December 4, 2008. Ms. Ellis participated personally. The employer participated by Chris Juni, Safety/Human Resources, and Troy Dillon, Production Manager. Exhibits One through Ten were admitted on the employer's behalf. The employer was represented by Chris Scheibe of TALX Corporation.

**ISSUE:**

At issue in this matter is whether Ms. Ellis was separated from employment for any disqualifying reason.

**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: Ms. Ellis was employed by Jeld-Wen, Inc. from April 23, 2007 until September 11, 2008. She was employed full time in production. She was discharged because of her attendance. The employer tracks attendance on a point system and an individual is subject to discharge at eight points. An attendance point drops off one year after the occurrence.

Ms. Ellis had five countable absences from September 11 through the end of 2007. She properly reported the absences, but the reason for them is unknown. The first absence that counted against her in 2008 was on April 17, when she was absent due to illness. She used the remainder of her "wellness" time for a portion of the day. Ms. Ellis received a written warning regarding attendance on April 18. She received another written warning on May 15 after she was absent on May 13. The next written warning was on July 3 and was prompted by an absence on June 27. The reasons for the absences of April 17, May 13, and June 27 are unknown, but they were all properly reported.

The last written warning prior to Ms. Ellis' discharge was on August 8. She missed work on August 7 because she was moving. She was at eight points as of August 8. She was off work from August 14 through August 29 due to a disciplinary suspension for an unrelated matter. The final absence that triggered the discharge occurred on September 10, when Ms. Ellis was absent due to illness. She was notified of her discharge on September 11, 2008. Attendance was the sole reason for the discharge.

**REASONING AND CONCLUSIONS OF LAW:**

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 she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. There must be a current unexcused absence to support a disqualification from benefits. See 871 IAC 24.32(8). The administrative law judge is not bound by an employer's designation of an absence as "unexcused."

The final absence that prompted Ms. Ellis' discharge was on September 10, when she was absent due to illness. Inasmuch as the absence was for reasonable cause and was properly reported, it is excused. The next most prior absence that counted against Ms. Ellis' attendance was on August 7 when she was absent because she was moving. Since the absence was due to a matter of purely personal responsibility, it is unexcused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). However, an unexcused absence that occurred on August 7 would not represent a current act in relation to the discharge that occurred over one month later on September 11.

It is true that Ms. Ellis was absent from work from August 14 through August 29. However, those absences were due to a disciplinary suspension imposed by the employer. As such, Ms. Ellis had no choice in whether she could report to work on those dates. Even if the administrative law judge were to conclude that the suspension represented unexcused absences, the final day of suspension was August 29. The separation occurred almost two weeks later. Therefore, there would still be no current act of unexcused absenteeism.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Ms. Ellis' discharge was prompted by a current act that constituted misconduct within the meaning of the law. While the employer may have had good cause to discharge based on its attendance policy, conduct that might warrant a discharge from employment will not necessarily support 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, benefits are allowed.

**DECISION:**

The representative's decision dated November 6, 2008, reference 01, is hereby reversed. Ms. Ellis was discharged by Jeld-Wen, Inc., but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/kjw