

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS W SCOVILL
Claimant

APPEAL NO. 09A-UI-16532-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 11/30/08
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated October 22, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 8, 2009. Although duly notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Mr. Peter Cipriano, Hearing Representative and witness, Mr. Chris Juni, Safety/Human Resource Manager. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Travis Scovill was employed by Jeld-Wen Inc. from October 16, 2006 until October 7, 2009 when he was discharged for repeated violation of company safety policies. Mr. Scovill held the position of full-time production worker and was paid by the hour.

The claimant was discharged on October 7, 2009 based upon an incident that had taken place on September 30, 2009. At that time the claimant had failed to follow required lock-out/tag-out procedures while operation a company machine and had been injured while he attempted to place his hand in the machine without it being properly shut off and locked out as required by policy. The claimant was aware of the policy and had received a specific warning for failure to follow the lockout procedures in the past. As the claimant had received three warnings for serious safety violations, a decision was made to terminate Mr. Scovill from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does.

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.

The evidence in the record establishes that the claimant was aware of the company's lock-out/tag-out policies and was aware that violation of the policies could result in his termination from employment. The claimant had been previously specially warned for a violation of the company's lock-out/tag-out procedures. A decision was made to terminate the claimant when he willfully disregarded the company's lock-out/tag-out procedures and placed his hands in a machine that he was operating that had not been shut off or locked out as required. The claimant's conduct resulted in an injury to the claimant. Because of repeated failures to follow company safety policies the claimant was discharged.

The evidence in the record establishes conduct that showed a willful disregard for the employer's interests and standards of behavior. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated October 22, 2009, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css