

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN CLARK
Claimant

APPEAL NO. 07A-UI-01648-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 01-07-07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 9, 2007, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 9, 2007. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Troy Dillon, Production Manager; Scott Logan, Human Resources; and Marty Young, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 builder for Jeld-Wen from June 12, 2006 to November 28, 2006. He was discharged for exceeding the employer's allowed number of attendance points. On June 22, 2006, the claimant was late and received one-half point and June 27, 2006, he left early due to illness and received one point; and the employer issued a verbal warning June 29, 2006. On September 12, 2006, the claimant was absent due to illness and received one point; on September 18, 2006, he left early due to illness and received one point; on September 19, 2006, he was absent due to illness and received one point; on October 2, 2006, he called in but did not provide a reason for his absence and received one point; and on October 3, 2006, he received a verbal warning. On October 16 and October 30, 2006, he called in but did not provide a reason for his absence and received one point for each date; on November 9, 2006, he was absent due to illness and received one point; and on November 12, 2006, he received a final written warning for accumulating 8.5 points. The warning stated that any further absences would result in termination. On November 29, 2006, the claimant was absent due to illness and the employer terminated his employment for exceeding nine attendance points.

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.

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). While the claimant did violate the employer's attendance policy, six of the claimant's nine points were due to properly reported illness and, consequently, cannot be considered unexcused absences under unemployment law. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The February 9, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw