

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

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DES MOINES IA 50311

JELD-WEN INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-04460-DWT
OC 02/29/04 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 are 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

STATEMENT OF THE CASE:

Jeld-Wen, Inc. (employer) appealed a representative's April 9, 2004 decision (reference 01) that concluded Lawrence A. DeSmet (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2004. The claimant participated in the hearing. Ruth Doland, a representative with TALX, appeared on the employer's behalf with Ryan Maher, the general manager, and Scott Johnson, the senior sales facilitator. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 28, 2002. The claimant worked as a full-time inside sales person. The claimant applied for an outside sales position in late 2003. The employer did not promote the claimant to this position in late 2003 or early 2004. Maher, however, told the claimant he would get the promotion the next time an outside sales position became available. The claimant applied for the next outside sales position in early 2004.

On March 2, 2004, Maher told the claimant he had not been promoted to the outside sales position because there had been problems with his job performance as an inside sales person the last 30 to 45 days of his employment. While the claimant recognized there had been some problems with his recent job performance, he was upset that the employer did not promote him to the outside sales position. During the March 2 discussion, the claimant told Maher he had lied to the claimant because he previously promised the claimant would get the next outside sales position. After the claimant made this remark, Maher and the claimant became involved in a heated discussion. Both men became upset with the other. Finally, Maher told the claimant he was discharged because he did not need to listen to the claimant lecturing him.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Although Maher did not characterize the meeting in his office as a confrontation, Johnson, who was in the office, made this characterization. The employer acknowledged the claimant's demeanor was not characteristic and it was obvious the claimant became upset and angry during the March 2 discussion. A preponderance of the evidence establishes the employer and claimant became involved in a hotheaded incident on March 2. During the hotheaded incident or confrontation, the claimant may have used poor judgment. The facts do not, however, indicate he intentionally and substantially disregarded the standard of behavior the employer had a right to expect from him. Even though the claimant did not commit work-connected misconduct, the employer had business reasons for discharging him. The claimant is eligible to receive unemployment insurance benefits as of February 29, 2004.

DECISION:

The representative's April 9, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf