

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON M CUPPLES
Claimant

APPEAL NO: 07A-UI-00636-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN
Employer

**OC: 07/23/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jason Cupples (claimant) appealed a representative's January 12, 2007 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Jeld-Wen (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 1, 2007. The claimant participated personally. The employer was represented by Craig Cree, Hearings Representative, and participated by Nicolle Smith, Human Resources Manager, and Brad Harris, Production Manager. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in March 2006, as a full-time production worker. Prior to his employment the claimant served in the military in Iraq. After his release he suffered from depression and was under medical supervision.

On December 6, 2006, the claimant's physician changed the claimant's medicine for depression. Later the claimant's girlfriend broke off her relationship with him. On December 8, 2006, the claimant could not stop crying at work. He sat in an office with a superior, holding her hand and talking about his suicidal feelings. The claimant felt he was not in his right mind and not in control of his actions. The employer called law enforcement. When law enforcement arrived they asked everyone to leave the room.

After everyone left the room law enforcement asked the claimant questions and told him he had to leave. The claimant did not want to leave and said so. He took some scissors from a pencil cup on the desk and held them like a security blanket against his leg. His other hand covered his eyes while he continued to cry. Law enforcement asked the claimant to put the scissors down but the claimant continued to cry and not respond. The officers told the claimant they

were going to mace him. The claimant did not respond. Law enforcement maced the claimant and wrestled him to the ground. One officer cut himself on the scissors when he threw the claimant to the ground. The claimant did not fight, hit, push or point the scissors at the officers.

The claimant was thrown in the ambulance and taken to the psychiatric ward where he was held for three days. He was released to police custody and was incarcerated for a few days on assault charges. The claimant pled not guilty and is awaiting pre-trial in April 2007.

The claimant started telephoning the employer asking if he had a job as soon as he was released on or about December 15, 2006. The employer told the claimant that it was not sure if the claimant was still employed. On December 21, 2006, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on December 8, 2006. The claimant was not discharged until December 21, 2006. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge. The claimant's actions were not volitional and were a result of his illness. Disqualification may not be imposed.

DECISION:

The representative's January 12, 2007 decision (reference 04) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs