

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH A LIEBHART
Claimant

APPEAL NO: 10A-UI-01642-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 12/20/09
Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jeld-Wen, Inc. (employer) appealed a representative's January 21, 2010 decision (reference 01) that concluded Joseph A. Liebhart (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on March 10, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Susan Schneider, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, John Murphy and Dave Shaffer. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer as a seasonal worker on May 15, 2009. Beginning August 1, 2009 he worked full time as permanent general laborer at the employer's Grinnell, Iowa door manufacturing facility. His last day of work was December 16, 2009. The employer discharged him on December 21, 2009. The stated reason for the discharge was failing to follow the employer's lock-out/tag-out safety policy.

At the end of the day on December 16 the claimant had the saw he operated open and was cleaning it out, but had failed to disconnect and lock out both the air power and electric power to the saw, when Mr. Murphy, the group manager, walked by and discovered the problem. The claimant routinely worked on that machine and was aware of the safety requirements for disengaging and locking out the power prior to opening the machine; his only explanation was that he was "being lazy." As a result of this incident, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective December 20, 2009. The claimant has received no unemployment insurance benefits since the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's knowingly failing to disconnect and lock out the power before opening the machine as required shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 21, 2010 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of December 16, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs