

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAKUB A WRIGHT
Claimant

JELD-WEN INC
Employer

APPEAL 15A-UI-14270-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 21, 2015, (reference 01) unemployment insurance decision that denied benefits based upon his discharge. The parties were properly notified of the hearing. A telephone hearing was held on January 20, 2016. The claimant Jakub Wright participated and testified. The employer Jeld-Wen participated through Human Resources Associate Cole Johnson. Employer's Exhibits 1-3 were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as the lead maintenance worker from July 9, 2013, until this employment ended on November 25, 2015, when he was terminated based on his attendance.

Claimant missed work on November 24, 2015 due to illness. It is the employer's policy that employees should notify their immediate supervisor or use the call-in line if they are going to be absent for work. Beginning in January 2015 the employer instituted a points policy for attendance. (Exhibit 3). Under this policy employees are assessed one point for each full day missed and a half a point for any timed missed that is a half day or less. Employees are assessed an additional point for any absences that are not properly reported to a supervisor or the call-in line. On November 23, 2015, claimant phoned his immediate supervisor Jody Sundvold to tell him he was not feeling well and would probably not be at work the next day. Sundvold instructed claimant that he should be to work on time the following day. Claimant did not call Sundvold the following day to report that he was ill and would not be in to work.

Claimant's absence on November 24, 2015 put him at nine points, three points more than employees were allowed under the employer's attendance policy. Records indicate, in 2015, claimant was absent or tardy on January 22; August 13 and 24; September 14 and 15; October 2, 7, and 8; and November 12, 23, and 24. (Exhibit 1). Prior to November 24, 2015, claimant had received four written warnings regarding his attendance. Claimant's most recent

written warning was given to him on November 23, 2015 and stated that further attendance violations may lead to termination. (Exhibit 2). Claimant denied being given some of these written warnings, including the November 23 warning, but admitted he understood further absences would lead to termination. On November 25, 2015, claimant's next scheduled day to work, he was called into a meeting with Sundvold. During this meeting claimant and Sundvold spoke about his attendance. Sundvold asked claimant what he wanted to do. Claimant indicated Sundvold should do what was best for him. Sundvold then informed claimant his employment was being terminated for attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law." The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10.

Claimant phoned Sundvold on the evening of November 23, 2015 to let him know he was not feeling well. Claimant did not call Sundvold or the call-in line the following day, when he was scheduled to work, to report that he was in fact ill and would not be in. Claimant's absence was

considered a no-call/no-show, as it was not properly reported under the employer's attendance policy. While claimant may have believed that his call to Sundvold on November 23 was sufficient, Sundvold's comment to him instructing him not to be late to work the following day would indicate to a reasonable person that Sundvold did not believe, at that point in time, that the claimant was definitively calling in sick for the next day. Because claimant's absence was not properly reported to the employer, it is considered unexcused.

It must also be determined whether claimant's unexcused absenteeism was excessive. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further improperly reported unexcused absences could result in termination of employment and the final absence was not properly reported as excused. Claimant received written warnings about his attendance on at least four occasions prior to his termination. The last warning, given to claimant just one day prior to his final unexcused absence, clearly stated that further violations may result in termination. While claimant disputed the authenticity of his signature on some of the written warnings, he also admitted he was in violation of the attendance policy and was aware this could result in his termination. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are denied.

DECISION:

The December 21, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/css