

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUSTY L CONRAD**  
Claimant

**APPEAL NO. 13A-UI-11353-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 09/15/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 3, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on October 31, 2013, by telephone conference call. The claimant participated personally. The employer participated by Chelsea Monnier production manager – inside doors, and Blake Vosburg, group manager. The record consists of the testimony of Chelsea Monnier; the testimony of Blake Vosburg; and the testimony of Rusty Conrad.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures windows and doors at its facility located in Grinnell, Iowa. The claimant was hired on March 25, 2013, as a bi-fold boxer and staffer. He was a full-time employee. His last day of work was September 16, 2013. He was terminated on September 16, 2013, for violation of the employer's attendance policy.

The claimant's attendance record shows the following:

April 4, 2013	Mother in hospital
April 13, 2013	Went home early due to personal illness
April 22, 2013	No vehicle to get to work
May 24, 2013	Personal Illness
June 26, 2013	Was not paying attention to time (late)
July 16, 2013	Absent
July 22, 2013	Absent

July 24, 2013                      Late due to car problem  
July 26, 2013                      Left early to take sister to doctor  
September 16, 2013              Late due to flat tire

The claimant received a verbal warning about his attendance on July 2, 2013. Blake Vosburg spoke to the claimant about his attendance points on July 24, 2013, and July 26, 2013. On July 26, 2013, the claimant was specifically told he was at eight points and that his job was in jeopardy.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant's attendance record shows both excused and unexcused absences. The majority of the claimant's unexcused absences were due to car problems, which is a personal responsibility. The employer's witnesses credibly testified that the claimant knew where he stood on points and that his job was in jeopardy due to excessive unexcused absenteeism. The final absence was unexcused because the claimant was late because of a flat tire. Since the employer has shown that the claimant was discharged for excessive unexcused absenteeism, benefits are denied.

**DECISION:**

The decision of the representative dated October 3, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs