

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS J VANBAALE
Claimant

APPEAL NO: 14A-UI-02699-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 03/10/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 28, 2014 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit for reasons that do not qualify him to receive benefits. The claimant participated at the April 2 hearing. The employer did not respond to the hearing notice or participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a temporary employee in mid-October 2012. In March 2013, the employer hired the claimant to work as a full-time employee. The claimant understood the employer's written attendance policy indicates an employee can be terminated if the employee accumulates 40 hours or more of unexcused absences.

In November 2013, the employer gave the claimant a final written warning for attendance issues. The employer skipped the verbal and first written warning. The warning informed the claimant that if he had any more unexcused absences, he would be discharged.

The claimant was off work for medical issues from January 14 through January 20, 2014. When the claimant tried to return to work, he had car issues. He called the employer's human resource department and asked if he could work third shift instead of first shift. The claimant had a ride to work if he could work third shift. The human resource department representative indicated this would be checked into and someone would call and let the claimant know the answer. The employer did not contact the claimant again about changing the shift he worked. Each day the claimant was unable to work, he called the employer to report he was unable to work. On January 24, the employer told the claimant that the employer no longer needed his

services. The claimant had planned to return to work as scheduled on Monday, January 27, 2014. The claimant filed an additional claim during the week of February 9, 2014.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit his employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The claimant did not quit this employment. Instead, the employer discharged him.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The facts suggest the employer discharged the claimant for violating the employer's attendance policy – accumulating 40 or more hours of unexcused absence. The claimant knew his job was in jeopardy after he received a final written warning in November 2013. When the claimant had car issues in January, he notified the employer that he was unable to work first shift but asked if he could work a later shift. He had a way to get to work if he could work a later shift. The employer did not respond to the claimant's request to work a later shift. Instead, the employer told him on January 24 that his services were no longer needed.

The employer may have had justifiable business reasons for discharging the claimant. Since the employer did not participate at the hearing, the evidence does not establish that the claimant intentionally violated the employer's attendance policy. The employer did not establish that the claimant committed work-connected misconduct. As of February 9, 2014, the claimant is not disqualified from receiving benefits.

DECISION:

The representative's February 28, 2014 determination (reference 03) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for business reasons, but the claimant did not commit work-connected misconduct. As of February 9, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css