IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CLAYTON J VANDER WEIDE
Claimant

JELD-WEN
Employer

APPEAL NO. 09A-UI-05875-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/15/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Clayton Vander Weide (claimant) appealed a representative's April 10, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Jeld-Wen (employer) for excessive unexcused absenteeism after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 30, 2009. The claimant participated personally. The employer was represented by Kellen Anderson, Hearings Representative, and participated by Travis Smith, Production Manager, and Chris Juni, Safety and Human Resources Manager. The employer offered and 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 on June 11, 2007, as a full-time special assembly worker. The claimant signed for receipt of the employer's handbook on June 11, 2007. The handbook states that a person who accumulates eight points in a rolling 12 month period will be terminated.

The claimant properly reported his absence for an unknown reason on June 9, 2008. The claimant properly reported his absence due to illness on September 15, 2008. The claimant met with Department of Human Services in a court ordered meeting on July 14, October 3, 13, 17, 20 and 29, 2008. On March 3, 2009, the claimant properly reported his absence due to a work-related injury. On March 4, 2009, the employer issued the claimant a final written warning for absenteeism. The employer notified the claimant that further infractions could result in termination from employment.

On March 19, 2009, the claimant properly reported his absence due to taking medication for a work-related injury. He was suffering from pain in the middle of the night. He took hydrocodone

as prescribed by the employer's physician. This caused the claimant to be sleepy. The employer terminated the claimant on March 19, 2009, for excessive absenteeism.

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 has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on March 19, 2009. The claimant's

absence does not amount to job misconduct because it was properly reported to the best of his ability. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's April 10, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs