

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN M COLLINS

Claimant

APPEAL NO: 12A-UI-10623-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC

Employer

OC: 08/05/12

Claimant: Respondent (2/R)

Iowa Code § 96.5(2) a- Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 23, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Susan Chemalousky, a TALX representative, appeared on the employer's behalf. Gayle Kingery and Nelson Watson testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2009. He worked as a full time general laborer. The employer's policy informs employees they will be discharged if they accumulate more than 40 hours of unexcused absences. The employer gave the claimant written warnings about his attendance on March 30 and May 10, 2012. The May 10 warning informed the claimant he had accumulated 29.75 hours of unexcused absenteeism. Even though the claimant did not believe his supervisor accurately kept track of his wellness hours and unexcused absenteeism, he did not go to his supervisor's boss or the human resource department to find out if his unexcused absences were properly recorded.

The claimant did not call or report to work on June 6 and 16. He was absent 10 hours each of these days. He did not notify the employer that he was unable to work either day. On June 16, the alternator on his vehicle went out and the claimant could not get to work. The claimant tried to contact the employer on June 16, but was unable to reach the employer or leave a message. Watson talked to the claimant on June 17 and told him had more than 40 hours of unexcused absences. Watson wanted to give the claimant another chance to improve his attendance. He warned the claimant that his job was in jeopardy and if he reported to work late again or had any more unexcused absences, he would be discharged.

On July 31, the claimant was in Marshalltown at his girlfriend's home. He overslept. By the time he woke up, his girlfriend had already left for work. The claimant did not have a ride to work. The claimant was about 30 minutes away from work by car. The claimant walked to work and was 4.5 hours late for work. He did not call the employer to report he would be late. On July 31, the employer discharged the claimant because he violated the employer's attendance policy by continuing to have unexcused absences and accumulating more than 40 hours of unexcused absences. As of July 31, the claimant had 53 hours of unexcused absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer warned the claimant on May 10 that he had accumulated 29.75 hours of unexcused absences. The claimant does not remember why he did not report to work on June 6. On June 16, the claimant tried to contact employer but was not successful. He did not report to work on June 16 because his alternator went out on his car and did not have a ride to work. As a result of the June 6 and 16 absences, the claimant had accumulated 49.75 hours of unexcused absences. The employer could have discharged him on June 17, but did not. The claimant again received a warning that if he had anymore unexcused absences or was again late for work his job was in jeopardy.

On July 31 the claimant overslept and walked to work. Unfortunately, the claimant failed to notify the employer he would be late. The claimant was 4.5 hours late for work. Since the employer had already given him a second chance to improve his attendance, the employer discharged the claimant on July 31. On July 31 the claimant's failure to properly notify the employer that he would be late for work amounts to work-connected misconduct. As of August 5, 2012, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits the claimant may have received since August 5, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's August 23, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 5, 2012. This

disqualification continues until he 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs