IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARTIN E SIMMONS
Claimant

JELD-WEN INC
Employer

APPEAL NO. 08A-UI-04962-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/13/08 R: 03
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Martin E. Simmons (claimant) appealed a representative's May 22, 2008 decision (reference 02) that concluded he was not qualified to receive benefits, and the account of Jeld-Wen, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 9, 2008. The claimant participated in the hearing. Edward O'Brien, a TALX representative, appeared on the employer's behalf. Travis Smith, the production manager, and Chris Juni appeared as the employer's witnesses. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on November 12, 2007. The claimant worked as a full-time production employee. Tim Elliott was the claimant's supervisor. At the time of hire, the claimant received information about the employer's attendance policy. The policy informs employees that if an employee accumulates more than eight unexcused absences or attendance occurrences in a rolling calendar year, the employer will discharge the employee for excessive absenteeism. (Employer Exhibit Four.)

The claimant received an attendance occurrence on December 10, December 11, 2007 and February 6, 2008. The employer gave the claimant a verbal warning on March 21, 2008 because he had accumulated four attendance occurrences when he called in on March 10. (Employer Exhibit Two.) After the claimant received the March warning, the employer excused his absences on February 29, March 10, 11, 12, 13, 14, and 17. The employer then adjusted the claimant's attendance occurrences so he only had three attendance occurrences as of March 21, 2008.

On March 24, the claimant notified the employer that he had car trouble and was unable to work. The claimant rode with another employee to work and as a result of weather conditions, the claimant could not get to work. The claimant notified the employer on March 28 and April 7 that he was unable to work. (Employer Exhibit Three.) On April 11, the claimant's girlfriend and the mother of his one-year old and baby left the home without notice and did not return. The claimant works third shift 11:00 p.m. to 7:00 a.m. The claimant notified the employer before his shift on April 11 that he was unable to work. The claimant wanted to talk to his supervisor to explain what had happened and left a message for him to contact the claimant.

When the mother his children did not return home, the claimant tried to find a relative to watch his children so he could work. His relatives had to leave their home by 5:00 a.m. to work and could not take care of the claimant's children. On April 14, 15, 16 and 17, the claimant notified the employer he was unable to work. The claimant could not work because he had not found anyone to take care of his children so he could work. The claimant was finally able to talk to his supervisor on April 16. The claimant explained the situation and indicated he had finally found someone to take care of his children starting Monday. The claimant understood that when he returned to work, the employer would give him a final warning for attendance issues and his job would be in jeopardy, but he would not be discharged.

The claimant notified the employer he was unable to work on April 17, 2008. The claimant then talked to Smith and explained his childcare situation but that he had just recently found someone to take of his children so he could work. The employer did not excuse the claimant's April 11 through 17 absences. Therefore as of April 17, the claimant had 11 unexcused absences. On April 17, the employer discharged the claimant for violating the employer's attendance policy for excessive absenteeism.

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 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 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 discharged the claimant for business reasons after the claimant violated the employer's attendance policy and accumulated more than eight attendance occurrences in less than a year. The claimant did not substantially disregard the employer's interests. He properly notified the employer when he was unable to work. The claimant established reasonable grounds for his April 11 through 17 absences. The claimant had no knowledge his girlfriend would walk out and not return. The claimant then took reasonable steps to find a childcare for his two young children. The claimant may have used poor judgment when he did not immediately talk to his supervisor, Smith or a human resource representative about his

childcare dilemma. The claimant, however, tried to talk to his supervisor to explain the situation with his children before April 16. Based on the facts in this case, the claimant did not commit work-connected misconduct. Therefore, as of April 20, 2008, the claimant is qualified to receive benefits. (The claimant was not available to work the majority of the week of April 13 because of childcare issues.)

DECISION:

The representative's May 22, 2008 decision (reference 02) is reversed. The employer discharged the claimant for compelling business reasons. In this case, these reasons do not constitute work-connected misconduct. As of April 20, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css