

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN S GRICE
Claimant

JELD-WEN INC
Employer

APPEAL 20A-UI-06199-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Jeld-Wen (employer) appealed a representative's June 11, 2020, decision (reference 01) that concluded John Grice (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 15, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Mark Shaw, Human Resources Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

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 October 21, 2019, as a full-time production associate. He signed for receipt of the employer's handbook on October 21, 2019. The handbook stated that an employee would be terminated if they accrued six attendance points. An absence of an entire day would result in one attendance point. Absences with a doctor's note were no different from other absences, unless they were pre-approved. Absences for one-half day or less resulted in the accrual of one-half point. The employer did not keep a list of the reasons of employee's absences.

On December 18, 2019, the employer issued the claimant a written reprimand for having 3.5 points. It warned the claimant that if he had six points, he would be terminated. On February 17, 2020, the employer issued the claimant a written reprimand for having 5.5 points as of February 2, 2020. It again warned the claimant that if he had six points, he would be terminated.

On February 13, 2020, the claimant accrued 0.50 points for a total of six points. The employer did not terminate the claimant. On February 25, 2020, the claimant accrued 0.50 points for a total of 6.5 points. The employer did not terminate the claimant. On April 2, 2020, the claimant accrued 0.50 points for a total of seven points. The employer believed the claimant was absent for the first part of the day but does not know the reason. The employer terminated the claimant on April 6, 2020.

The claimant filed for unemployment insurance benefits with an effective date of May 3, 2020. He reopened his claim on June 7, 2020. The employer provided the number of the person who would participate in the fact-finding interview on June 9, 2020. The fact-finder called but the person was not available. The fact-finder left a voice message with the fact-finder's name, number, and the employer's appeal rights. The employer's witness did not respond to the message.

The claimant's weekly benefit amount was determined to be \$295.00. He received benefits of \$295.00 per week from June 7, 2020, to the week ending July 11, 2020. This is a total of \$1,475.00 in state unemployment insurance benefits after the separation from employment. He also received \$2,400.00 in Federal Pandemic Unemployment Compensation for the four-week period ending July 4, 2020.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309 (Iowa 1986).

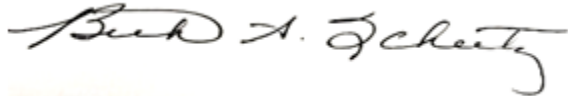
The employer had a specific rule that said they could terminate employees for the accrual of six attendance points, no matter what the reason for the absence. The employer had this rule even though properly reported absences due to illness are not misconduct. Excessive absences are not misconduct unless 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 did not keep track of the claimant's reasons for absence so that it could offer testimony as required by the Iowa Administrative Code.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide the reason for the final absence or why the employer did not terminate the claimant in February 2020, when the claimant actually accrued six points. 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.

The claimant was not overpaid unemployment insurance benefits or Federal Pandemic Unemployment Compensation.

DECISION:

The representative's June 11, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible. The claimant was not overpaid unemployment insurance benefits or Federal Pandemic Unemployment Compensation.



Beth A. Scheetz
Administrative Law Judge

July 23, 2020
Decision Dated and Mailed

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