IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU

CHRIS J WATKINS Claimant **JELD-WEN INC** Employer	**APPEAL NO. 22A-UI-05968-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/20/22** **Claimant: Respondent (1R)**

Iowa Code section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

On March 9, 2022, the employer filed a timely appeal from the March 4, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 20, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on July 11, 2022. Chris Watkins (claimant) participated. Sharon Miller represented the employer and presented additional testimony through Vern Kidder. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2, 5, 9, 11 and 18 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:
Christopher Watkins (claimant) was employed by Jeld-Wen, Inc. as a full-time skilled production laborer from June 2019 until February 18, 2022, when the employer discharged the claimant for attendance. The claimant's work hours were 10:30 p.m. to 6:30 a.m., Sunday evening through Friday morning. If the claimant needed to be absent from work, the employer's absence reporting policy required that the claimant call and speak with a manager or call and leave a message for a manager prior to the scheduled start of his shift. The claimant was familiar with the absence reporting policy.

The claimant last performed work for the employer on November 29, 2021. In late October 2021, the claimant commenced experiencing recurring bouts of abdominal pain at work. The

claimant's recurring abdominal pain prompted multiple trips to the emergency room. On one of those occasions, the claimant's manager transported the claimant to the emergency room.

During the shift that Started on November 28, 2021 and that ended on November 29, 2021, the claimant left work early due to severe abdominal pain. Prior to leaving the shift, the claimant spoke with a manger and obtained permission to leave. The claimant sought evaluation and treatment at an emergency room, was advised he likely had a stomach virus, and was sent home. The claimant's symptoms continued.

On the evening of November 29, 2021, the claimant gave timely and proper notice to the employer of his need to be absent from work that night due to continued abdominal pain that made it difficult for the claimant to stand. The claimant attempted to make an appointment with his primary care doctor, but found he would have to wait a week to see his primary doctor. The claimant decided he could not wait a week for an appointment and sought evaluation at a walk-in clinic. The walk-in clinic doctor told the cliamant the clinic was not capable of performing the necessary evaluative procedures and referred the claimant to a gastro-intestinal (GI) medical specialist. The walk-in clinic doctor warned the claimant it could be up to three months before the GI specialist would have an opening to see the clamant. The claimant secured an appointment with the GI specialist for February 15, 2022, the earliest available appointment.

On December 1, 2021, the claimant notified human resources representative Sharon Miller that the doctors he had seen up to that point were unable to diagnose the cause of the claimant's abdominal pain, that a doctor had referred the claimant to a GI specialist, and that the claimant had been advised it could be up to three months to be seen by the specialist. The claimant requested to start the process of applying for short-term disability benefits. The employer instructed the claimant to keep medical notes as proof he had been seen by a doctor. The employer told the claimant his doctor would need to complete short-term disability paper work and paperwork pertaining to leave under the Family and Medical Leave Act (FMLA). The employer directed the claimant to contact the employer's third-party leave administrator, New York Life, to start the process of applying for FMLA leave. The employer told the claimant that until New York Life approved the claimant for FMLA leave, the claimant would need to continue to call in daily absences and preserve doctors' notes. However, the employer also told the claimant that due to his inability to perform work, the employer would document in its computer system that the claimant was on a medical leave. The claimant asserts he misunderstood the human resources personnel's final comment to mean he would not need to continue to call in daily absences after December 1, 2021, though the employer had just told him he needed to continue to give daily notice until New York Life approved him for FMLA leave.

The claimant had next been scheduled to work on December 2, 2021. The claimant did not appear for work or give notice he would be absent on that day. The claimant was again absent without notice on December 5 and 6. The employer documented no-call/no-show absences on December 2, 5 and 6. The employer's attendance policy deemed three no-call/no-show absences a voluntary quit. However, the employer was aware the claimant was dealing with a significant medical issue and that the claimant was trying to apply for short-term disability and FMLA leave. The employer said nothing to the claimant at that time about a voluntary quit and nothing to indicate the claimant's employment was in jeopardy.

Upon receipt of the short-term disability application and FMLA request form, the claimant presented the forms to his primary doctor on December 5, 2021. The claimant's primary care doctor declined to complete the paperwork because that doctor had not placed the claimant on a medical leave and had not diagnosed the cause of the claimant's abdominal pain. The FMLA paperwork did not solicit a diagnosis and the claimant was still without a diagnosis.

After the claimant's primary doctor refused to complete the short-term disability or FMLA paperwork, the claimant took the documentation to the walk-in clinic. The claimant advises the provider at the walk-in clinic also declined to complete the paperwork.

On December 6 or 7, 2021, the claimant contacted human resources representative Sharon Miller and told her about the difficulty he was encountering in getting a doctor to complete the short-term disability and FMLA paperwork. Ms. Miller told the claimant to make sure he got the paperwork turned in. Ms. Miller asserted the claimant had no-call/no-show absences and that the claimant had not provided doctor's notes. The employer told the claimant to hold onto medical notes as proof he had been seen by a doctor. The employer again said nothing to the claimant about a voluntary quit and nothing to indicate the claimant's employment was in jeopardy.

The claimant set up another appointment with his primary care doctor. The primary doctor speculated about a possible diagnosis, but provided no further evaluation or treatment. Nor did the primary doctor complete the FMLA or short-term disability paperwork.

On December 9, 2021, the claimant's ongoing abdominal pain issues prompted the claimant to return to the emergency due extreme pain on the right side of his abdomen. The claimant underwent a CT scan, through which the provider ruled out the claimant's appendix as the source of the abdominal pain. The claimant requested the provider complete the short-term disability and FMLA leave documentation, but the provider declined. By this time, the claimant has developed two large lumps in his groin area. The provider suspected the lumps were hernias. The provider declined to provide further evaluation or treatment regarding the suspected hernias and, instead, encouraged the claimant to try to speed up the GI consult.

On December 29, 2021, New York Life sent a letter to the claimant advising that he was about to exhaust FMLA and/or company-protected job leave on January 5, 2022. On December 31, 2021 New York Life send the claimant a second Certification of Health Care Provider for Employee's Serious Health Condition, along with a Fitness for Duty Certification document indicating the claimant could not return to work without a release from his health care provider. New York Life also included documentation indicating the claimant has been approved for FMLA and short-term disability for the period of November 30, 201 through December 13, 2021. The same document indicated the claimant was "eligible" for FMLA for the period of December 14, 2021 through January 5, 2021, but was denied short-term disability benefits for the period of December 14, 2021 through January 10, 2022.

The claimant continued off work into the new year and through February 15, 2022, when he was finally able to see the GI specialist. The GI specialist diagnosed the claimant with "sliding hernias" and concluded the condition was likely caused by the employment. Following the appointment, the claimant contacted Fern Kidder, Human Resources Manager. The claimant shared the diagnosis and additional information concerning the work-related nature of the injury. The employer told the claimant that he was discharged from the employment and that the claimant would thereafter have to be seen by a provider selected by the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

The employer's belated assertion that the claimant somehow voluntarily quit through an early December 2021 three-day no-call/no-show is without merit. The employer's Exhibit 9 clearly indicates the claimant was off work pursuant an approved FMLA leave through December 13, 2021, eligible for FMLA leave through January 5, 2022, and still considered an employee as of December 31, 2021.

The evidence establishes an involuntary separation. The medical issue that took the claimant off work and that kept the claimant off work into mid-February 2022 turned out to be, according to the GI specialist, a work-related injury. The claimant, through no fault of his own and with no help from the employer, was trapped in a catch-22 situation from the time he went off work in late November 2021 until he was finally able, through his own efforts, to see a GI specialist who diagnosed the work-related injury. At no time did the claimant indicate a desire to voluntarily separate from the employment. Included in the paperwork New York Life sent to the claimant on December 31, 2021 was a document stating the claimant could not return to the employment until released by his medical provider. A reasonable person would conclude the first set of FMLA/short-term disability materials included a similar document. At no time prior to February 18, 2022 did the employer communicate to the claimant that the employer believed the claimant had voluntarily quit. Immediately following the claimant's report of a work-related injury, the employer initiated a discharge.

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).

The employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge

should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The evidence in the record establishes a discharge for no disqualifying reason. The administrative law judge concludes the claimant's testimony was more credible than the testimony provided by the employer. The claimant provided candid, detailed testimony regarding his contacts with the employer, his efforts to address a serious health issue, and his efforts to comply with the employer's demand for documentation. On the other hand, the employer, according to the employer's testimony and conveniently, did not document in any reasonable manner its contacts or conversations with the claimant regarding what turned out to be a work-related injury. As discussed above, the claimant, through no fault of his own and with no help from the employer, was trapped in a catch-22 situation from the time he went off work in late November 2021 until he was finally able, through his own efforts, to see a GI specialist who diagnosed the work-related injury. None of the time away from work between November 29, 2021 and February 18, 2022 can be deemed unexcused under the applicable law. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 4, 2022 (reference 01) decision is AFFIRMED. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

September 21, 2022
Decision Dated and Mailed

jet/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:
1) The name, address, and social security number of the claimant.
2) A reference to the decision from which the appeal is taken.
3) That an appeal from such decision is being made and such appeal is signed.
4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at https://www.legis.iowa.gov/docs/code/17A.19.pdf.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:
A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:
1) El nombre, dirección y número de seguro social del reclamante.
2) Una referencia a la decisión de la que se toma la apelación.
3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en https://www.legis.iowa.gov/docs/code/17A.19.pdf.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:
Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.