

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A REEVES
Claimant

APPEAL NO: 13A-UI-00479-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 11/18/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jeld-Wen, Inc. (employer) appealed a representative's January 3, 2013 decision (reference 01) that concluded Mark A. Reeves (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 15, 2013. The claimant participated in the hearing. Susan Chemlovsky of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Brad Harris. One other witness, Gale Kingery, was available on behalf of the employer but did not testify. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on August 2, 2010. He worked full time as a laborer in the employer's Grinnell, Iowa. His last day of work was November 16, 2012. The employer discharged him on or about November 30, 2012. The reason asserted for the discharge was that the claimant had left work without working overtime without permission on November 16.

The claimant's standard or base shift was from 6:00 a.m. to 2:30 p.m. However, in the summer and fall it was common to work overtime to 4:30 p.m. That overtime typically ended by the end of November. On November 16 the claimant believed he was done with his required work at 2:30 p.m. and left. The lead person who was in charge of the area in which the claimant was working that day had already left for the day. Earlier in the week employees had been sent

home early due to a lack of work, and there had been at least one other day that week where there was not work for the claimant until 4:30 p.m. He had never been told that he needed to check with any particular person before determining that there was no other work that he needed to stay and do before leaving. However, on November 16 the plant manager, Harris, would have had additional work for the claimant after 2:30 p.m. had the claimant checked with him before leaving.

After Harris learned that the claimant had left at 2:30 p.m. without checking with anyone, he sent the claimant a text message at about 3:42 p.m., telling him he did not need to come back next week as he was not needed and that Harris would call him when he was needed. When the claimant started inquiring after about two weeks when he would be needed again, Harris informed the claimant that he was fired because he had left on November 16 without staying for overtime work. There had not been any prior issues of this type in the past.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is because he had not stayed for overtime work on November 16, 2012. Under the circumstances of this case, the claimant's departure at the normal 2:30 p.m. time because of a belief he was done was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 3, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css