

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN R JAWORSKI**  
Claimant

**APPEAL NO. 06A-UI-09085-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EAGLE WINDOW & DOOR INC**  
Employer

**OC: 04/23/06 R: 04  
Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Kevin Jaworski filed an appeal from a representative's decision dated August 30, 2006, reference 02, which denied benefits based on his separation from Eagle Window & Door, Inc. (Eagle). After due notice was issued, a hearing was held by telephone on October 9, 2006. Mr. Jaworski participated personally. The employer participated by Amy Turner, Human Resources Representative.

**ISSUE:**

At issue in this matter is whether Mr. Jaworski was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Jaworski began working for Eagle on September 21, 2005 and was employed full time as a painter. His last day at work was July 26, 2006. Mr. Jaworski then missed scheduled work without notice on July 28, July 31 and August 1. He missed work because he was in jail.

Mr. Jaworski had had attendance problems in the past. He received warnings concerning attendance on March 1, June 20, and July 5. The warning of July 5 was accompanied by a three-day suspension. Some of Mr. Jaworski's absences were due to illness, but others were for personal matters. His absence of July 28 would have been sufficient to result in discharge because it caused him to exceed the allowable attendance points. Attendance was the sole reason for Mr. Jaworski's separation from Eagle.

**REASONING AND CONCLUSIONS OF LAW:**

The parties disagree as to whether the separation was a quit or a discharge. The administrative law judge concludes that Mr. Jaworski abandoned his job when he stopped reporting for available work. Therefore, the separation is considered a quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for

good cause attributable to the employer. Iowa Code section 96.5(1). Having taken the position that he was discharged, Mr. Jaworski did not offer any reason as to why he would quit. The evidence of record does not establish any good cause attributable to the employer for the quit.

Even if the administrative law judge were to characterize the separation as a discharge, Mr. Jaworski still would not be entitled to benefits. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2) a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Mr. Jaworski did not report his absence of July 28. The absence was due to a personal matter, his incarceration. Because the absence was not for reasonable cause and was not properly reported, it is an unexcused absence.

Mr. Jaworski had been amply warned that his attendance was jeopardizing his continued employment with Eagle. He had personal absences in addition to those for illness. He had been suspended for three days because of his attendance on July 5. His separation would have been prompted by the unexcused absence of July 28. Given his attendance history and the fact that he had received warnings about his attendance, the administrative law judge would conclude that excessive unexcused absenteeism was established. Accordingly, if the separation was considered a discharge, it would be a discharge for disqualifying misconduct.

**DECISION:**

The representative's decision dated August 30, 2006, reference 02, is hereby affirmed. Mr. Jaworski quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw