

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CURT J BABBITT**  
Claimant

**APPEAL NO: 11A-UI-03853-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 02/20/11**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Jeld-Wen, Inc. (employer) appealed a representative's March 21, 2011 decision (reference 01) that concluded Curt J. Babbitt (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 commenced on April 19, 2011. The claimant participated in that portion of the hearing. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Eric Pederson, Chris Juni, and Chad Pirkel. During the hearing, Employer's Exhibits One through Seven were entered into evidence. After about an hour on April 19, the hearing was recessed; the remainder of the hearing was continued to May 13, 2011. However, when the administrative law judge called the claimant at the scheduled time for the hearing on that date, the claimant declined to participate in the remainder of the hearing; therefore, the remainder of the hearing was conducted only with the employer. 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?

**FINDINGS OF FACT:**

The claimant started working for the employer on February 15, 2010. He worked full time on the third shift as a fork truck operator at the employer's Grinnell, Iowa door manufacturing facility. His last day of work was February 2, 2011. The employer suspended him on that date, and discharged him on February 7, 2011. The stated reason for the discharge was having too many instances of unacceptable conduct.

The claimant had received his first documented verbal warning on October 13, 2010 for failure to carry out work instructions from his manager. On October 21 he received another written warning for unsafe operation of his forklift, striking a manager. On October 27 the employer gave him a further documented verbal warning for failure to carry out his manager's work

instructions. Also on October 27 he was given another documented verbal warning for abusive language toward another employee. On December 6 the employer gave him another written warning for insubordination and failure to carry out his manager's work instructions; this warning also resulted in a one-day suspension.

On February 1 the claimant had left the building at the end of his shift and gone to his car in the parking lot on the employer's property. There had been about a half-inch of snow fall overnight. Another employee approached his own vehicle in the parking lot, near the claimant's car. The claimant peeled out of his parking lot, covering the other employee with snow in the process, and leaving skid marks for about 60 feet in the snow, driving in a reckless and unsafe manner. Because of this reckless disregard for safety on the employer's property after the prior disciplinary issues, the employer determined to discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective February 20, 2011. The claimant has received unemployment insurance benefits after the separation.

### **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); Iowa Code § 96.5-2-a.

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 claimant's reckless and unsafe operation of his vehicle on the employer's property after being given the prior disciplinary warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits

on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's March 21, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 2, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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