

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARISELA PARRA MARTINEZ
Claimant

JELD-WEN INC
Employer

APPEAL 16A-UI-07990-H2T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/26/16
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed an appeal from the July 12, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 10, 2016. Claimant participated and was assisted by CTS language link interpreter Christian #10458. Employer participated through Cole Johnson, Human Resources Associate.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production laborer beginning on May 4, 2015 through June 24, 2016 when she was discharged. The claimant was given a copy of the employer's attendance policy and knew that if she reached six attendance points she would be discharged. On May 2, 2016 the claimant was given her final warning for attendance. At that time she was told that any additional incidents prior to July 2016 would lead to her discharge. Under the employer's policy absences for an employee's own illness or the illness of their family members are not considered excused. On June 22 the claimant properly reported her absence from work to take her ill four-year-old daughter to the doctor. The claimant obtained a note from the physician indicating that the child was ill and the claimant needed to care for her. The claimant has no other family members or spouse to help her care for her children when they are ill. The claimant's daycare provider refuses to provide day care for ill children.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Absences related to lack of childcare are generally held to be unexcused. *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). **However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991).**

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The claimant was placed in an impossible situation. Her child doctor informed her she needed to miss work to care for the child. She had no one else to provide care for her four year old child. To leave the ill child unattended is not a valid choice. The claimant did not want to miss work, but caring for her ill child made it impossible for her to attend work. Under these circumstances the administrative law judge cannot conclude that the claimant's absence from work was voluntary. Under these circumstances, the administrative law judge cannot conclude that her last absence was and unexcused absence. No intentional or voluntary misconduct has been established and no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 12, 2016, (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs