

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY J DILLON**  
Claimant

**APPEAL NO. 08A-UI-08131-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 07/06/08 R: 02**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jeld-Wen, Inc. filed a timely appeal from an employment insurance decision dated September 5, 2008, reference 01, that allowed benefits to Jeffrey J. Dillon. After due notice was issued, a telephone hearing was held September 25, 2008. Paul Murphy of TALX UC eXpress represented the employer in the hearing. Production Manager Troy Dillon and Human Resources and Safety Manager Chris Juni testified. Employer Exhibit One was admitted into evidence. The claimant, Jeffrey J. Dillon, did not respond to the hearing notice.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeffrey J. Dillon was hired by Jeld-Wen, Inc. on June 11, 2007. He last worked for the company on Friday, July 3, 2008 and was discharged on July 7, 2008 when he did not report to work.

Mr. Dillon received a copy of the company's attendance policy when he was hired. Employees are allowed no more than eight unexcused absences in a 12-month period. Between August 11, 2007 and June 3, 2008 Mr. Dillon accumulated eight unexcused absences. He received a warning on June 5 that advised him that he could be discharged upon his next unexcused absence. He notified the employer on July 7, 2008 that he would be absent but did not indicate the absence was for a medical reason. He did not return to the employer thereafter.

Mr. Dillon has received unemployment insurance benefits since filing a claim effective July 6, 2008.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does.

Iowa Code section 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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence in this record establishes that Mr. Dillon was absent without excuse on nine occasions within a 12-month period, culminating in his absence on July 7, 2008. The record also establishes that Mr. Dillon was aware of the policy and that he had received a warning following his penultimate absence. This evidence is sufficient to establish excessive unexcused absenteeism.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

Mr. Dillon has received unemployment insurance benefits since filing his present claim. The issue of whether these benefits must be repaid is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated September 5, 2008, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of whether he must repay the benefits that he has already received is remanded to the Unemployment Insurance Services Division.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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