

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW G MORGAN
Claimant

APPEAL NO. 14A-UI-09728-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 08/03/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Matthew Morgan (claimant) appealed a representative's September 11, 2014, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Jeld-Wen (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 8, 2014. The claimant participated personally. The employer participated by Diana Duncan, Human Resource Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 6, 2012, as a full-time warehouseman. The claimant signed for receipt of the employer's handbook on August 6, 2012. The handbook states that a worker must call a workplace hazard to a supervisor's attention. On September 6, 2012, the employer issued the claimant a verbal warning for failure to following instructions. On May 10, 2014, the employer issued the claimant a written warning for arguing with another worker.

On August 15, 2014, the new supervisor asked the claimant to remove broken glass from a window. The claimant examined the window and saw the glass was shattered. The claimant knew from experience that it was unsafe to remove the broken glass. The window should be rebuilt. The claimant told the new supervisor this but the new supervisor repeatedly told the claimant to remove the glass. The claimant refused because it was a hazard. The new supervisor took the claimant to the office. There he was told he would be written up the following work day for failure to follow the employer's instructions. The supervisor told the claimant to go home because there was not enough work. The claimant left work. On August 18, 2014, the employer terminated the claimant for failure to follow instructions on August 15, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The claimant's and the employer's testimony differed. The administrative law judge finds the claimant's testimony to be more credible. The employer had the power to present testimony but did not do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 11, 2014, decision (reference 02) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs