IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DYLON C MITCHELL
Claimant

JELD-WEN INC
Employer

APPEAL NO. 10A-UI-04333-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/21/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jeld-Wen (employer) appealed a representative's March 15, 2010 decision (reference 01) that concluded Dylon Mitchell (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 4, 2010. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Susan Schneider, Attorney at Law, and participated by Eric Pederson, Production Manager, and Chris Juni, Safety and Human Resources Manager. The employer offered and Exhibit One 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 November 28, 2010, as a full-time bi-fold boxer. The claimant signed for receipt of the employer's handbook and attendance policy on November 23, 2009. The attendance policy indicates that an employee will be terminated if he is absent more than two days and is within his first 90-days of employment.

The claimant was absent from work on December 22 and left early for his December 28, 2009, for unknown reasons. The claimant properly reported his absence. The employer issued the claimant a verbal and written warning on January 4, 2010. The employer notified the claimant that further infractions could result in termination from employment.

The claimant was absent from his shift that started on February 10, 2010, for an unknown reason. He properly reported his absence. The claimant worked his shift that started on February 12, 2010. The employer left the claimant a voice mail on February 15, 2010, telling him he was terminated for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 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. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, cannot be considered excessive.

Three incidents of tardiness or absenteeism after a warning constitutes misconduct. Clark v. Iowa Department of Job Services, 317 N.W.2d517 (Iowa App. 1982). In the case at hand, the employer found one incident of absenteeism after warning constituted misconduct. The employer did not provide sufficient evidence that three absences within a 90-day period is excessive and should be considered misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 15, 2010 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs