

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DANIEL MARTINEZ LOPEZ
Claimant

APPEAL NO: 18A-UI-10552-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 09/16/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 15, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 6, 2018. The claimant participated in the hearing with CTS Language Link Interpreter Jessie (21813). Mark Shaw, Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time production associate for Jeld-Wen, Inc. from August 9, 2017 to September 19, 2018. He was discharged from employment due to a final incident of absenteeism that occurred on September 14, 2018.

The claimant worked the 3:00 p.m. to 11:00 p.m. shift Monday through Friday with some Saturday overtime. The employer uses a point-based attendance policy and employees are discharged upon exceeding six points in a rolling 12 month period. Employees are allowed 120 hours including 24 hours of unexcused absenteeism. The claimant exhausted his unexcused hours prior to being assessed points. On October 10, 2017, the claimant received a written warning when he reached 3.50 points and on April 30, 2018, he received a written warning when he reached 5.00 points. On August 13, 2018, the claimant received .50 points for an absence of less than half of his shift for a total of 5.50 points.

On September 13, 2018, the claimant asked his manager if he could have September 14, 2018, off work. His supervisor said no as several other employees had asked for the day off and it was granted on a first come first serve basis. The claimant then went to the human resources coordinator and asked for help putting in a request for paid time off (PTO) for September 14, 2018. She assisted him but told him the request did not mean he would be approved for PTO

and that he would need to report to work if he was not approved. The claimant's request for PTO was denied and the human resources coordinator called the claimant the morning of September 14, 2018, and told him of the denial and that he needed to report to work that afternoon at 3:00 p.m. that day. The claimant responded that he was going to take the day off anyway and the employer could give him a point. That point put him at 6.50 points and his employment was terminated September 19, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The claimant accumulated 6.50 attendance points after using his 24 hours of allowed unexcused absenteeism. He requested September 14, 2018, off work on September 13, 2018, but a number of other employees had already asked for that day off and the employer denied his request. He then asked to use PTO but that request was also denied as it was made too late and too many other employees had already been granted that day off. It was not unreasonable for the employer to deny his request when he made it so late in the process and the employer needed to maintain enough employees to run the business.

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 absenteeism, is considered excessive. Therefore, benefits are denied.

DECISION:

The October 15, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn