

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BRIAN T BOND  
302 – 4<sup>TH</sup> ST  
GARWIN ST 50632

JELD-WEN INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-02754-DWT  
OC: 12/25/05 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Jeld-Wen, Inc. (employer) appealed representative's February 24, 2006 decision (reference 01) that concluded Brian T. Bond (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Carol Weidinger, a representative with TALX, appeared on the employer's behalf. Jamie Gibson and Travis Jansen testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on May 24, 1999. The claimant worked as a full-time warehouseman. John Murphy was the claimant's supervisor, but Jansen was training to become the claimant's supervisor.

During his employment, the employer gave the claimant written warnings for losing his temper at work. On June 4, 2004, the claimant received a written warning for becoming upset at a supervisor when asked to do a job when he was busy. In anger, the claimant threw a clipboard at the supervisor. On December 15, 2005, the claimant became upset after the employer told him he was going to receive a written warning for reporting to work late. The claimant threw a chair across a floor. The employer gave the claimant these warnings for violating the employer's policy of following a supervisor's reasonable instruction and for failing to act safely. The warnings informed the claimant that further problems could result in his discharge.

On February 6, 2006, the claimant was busy with a job assignment when Jansen asked the claimant to hand out a schedule. The claimant had a pneumatic stapler in his hand, pointed it at Jansen and shot a staple at him. The staple did not injure Jansen. It but bounced off his abdomen because Jansen had on two shirts. The claimant then stapled the schedule to the table and told Jansen, "There, it is done." The claimant then walked away.

Jansen reported the incident. After Murphy talked to the claimant, the claimant admitted he had shot a staple at Jansen. The claimant apologized to Jansen for doing this and indicated he had done it as a joke. The employer discharged the claimant on February 7, because the claimant repeatedly failed to act in a safe manner at work.

The claimant reopened his claim for unemployment insurance benefits during the week of February 5, 2006. The claimant filed a claim for benefits for the week ending March 4, 2006. He received \$225.00 in benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy after the December 15, 2005 warning. The claimant also knew or should have known the employer did not tolerate any type of dangerous or potentially dangerous acts at work. Prior to February 6, 2006, the claimant received warnings when he became upset with a supervisor and threw something. On February 6, the evidence indicates the claimant again became upset after a manager asked him to do another job. Shooting a staple at Jansen's body and then stapling the schedule to the table shows an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee especially when the employer had warned the claimant about similar behavior before. The employer discharged the claimant for the incident on February 6, which constitutes work-connected misconduct. As of February 5, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the week ending March 4, 2006. He has been overpaid \$225.00 in benefits he received for this week.

#### DECISION:

The representative's February 24, 2006 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 5, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The claimant is not legally entitled to receive benefits for the week ending March 4, 2006. The claimant has been overpaid and must repay \$225.00 in benefits he received for this week.

dlw/tjc