

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SCOTT C MAURITZEN**  
Claimant

**JELD-WEN INC**  
Employer

**APPEAL 17A-UI-06707-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/04/17**  
**Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 26, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on July 20, 2017. The claimant participated and testified. Also testifying on behalf of the claimant was witness Shanise Parker. The employer participated through Human Resource Associate Cole Johnson. Claimant's Exhibit A was received into evidence.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laborer from August 15, 2017, until this employment ended on April 26, 2017, when he was discharged.

On April 22, 2017, claimant was arrested for an OWI 3rd Offense. (Exhibit A). Claimant was taken to jail and did not have sufficient money to post bond until May 3, 2017. Claimant remained in jail this entire time and eventually entered a guilty plea to the charge. On Wednesday, April 26, 2017, Parker called and left a message for claimant's supervisor informing him of claimant's situation. There was no further contact between claimant or Parker and the employer. Once claimant was released from jail he assumed his employment had been terminated and made no attempt to contact the employer.

The employer testified claimant was separated from employment under its attendance policy regarding no-call/no-shows, but that he could have also been separated under the points system based on the number of days he was in jail. The no-call/no-show policy provides for

separation after three consecutive no-call/no-shows and the attendance policy provides for termination once six points are accumulated. Two points are issued for each no-call/no-show and one point is issued for each day of properly reported absences. Claimant was aware of the attendance policy and that his job may have been jeopardized by his incarceration.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit, but was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:<sup>1</sup>

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).

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

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<sup>1</sup> Iowa Code Section 96.5 was amended effective July 2, 2017 to specifically address separations involving incarceration. However, the claimant filed his claim for benefits on June 4, 2017, before the amendments went into effect.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10.

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 Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness or injury must be properly reported in order to be excused. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits; however, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The Iowa Supreme Court recently decided a case addressing a discharge for absences due to incarceration. "[I]nvoluntary incarceration, at least where the charges are dismissed, ... falls within the 'other reasonable grounds' for absence contemplated under rule 871—24.32(7)." *Irving v. E.A.B.*, 883 N.W.2d 179, 203 (Iowa 2016).

Here, claimant incurred three consecutive absences due to incarceration before being separated from employment. Unlike the claimant in *Irving*, however, claimant pled guilty to the charge for which he was incarcerated. It is reasonable to conclude that claimant acted voluntarily in a way that he knew, or reasonably should have known, would jeopardize his employment. Therefore, claimant's absences between April 24 and 26 are unexcused. The employer has established claimant was discharged from employment for disqualifying misconduct. Benefits are withheld.

**DECISION:**

The June 26, 2017, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant did not voluntarily quit but 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs