

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

DANA L FUNK  
503 N 3<sup>rd</sup> AVE E APT # 2  
NEWTON IA 50208

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

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Appeal Number: 04A-UI-07698-DWT  
OC: 11/23/03 R: 02  
Claimant: Appellant (5)

**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 are 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

STATEMENT OF THE CASE:

Dana L. Funk (claimant) appealed a representative's July 6, 2004 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Jeld-Wen, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not disqualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 10, 2004. The claimant participated in the hearing. Rob Sturm, attorney at law, appeared on the employer's behalf. Brad Harris, the production manager, 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.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2002. She worked as a full time welder. The claimant worked third shift.

On May 25, 2004, the claimant was randomly chosen to submit to a random drug test. The employer asked the claimant to submit to a drug test on May 25, 2004 about 6:00 a.m. The claimant told the employer she needed to get home that morning because she had to get her children to school. The employer agreed the claimant would not have to take the drug test on May 25. Arrangements were made for the claimant to take the drug test the next morning.

On May 26, when the employer told the claimant she had a scheduled appointment at 8:15 a.m. at the Grinnell hospital, the claimant did not indicate this would be a problem. The claimant had a friend, who also works for the employer, take her to the hospital. The claimant gave a urine sample, but the nurse told her she had not given enough and would have to give another sample. The claimant became upset because her first sample was thrown away. The employer talked to the claimant while she was at the hospital and told her the employer would send an employee to pick her up and take her home so she could take care of her children.

The claimant was not at the hospital when the employee arrived. The claimant had her friend take her to her home in Newton. The employer called the claimant's home and talked to her around 9:30 a.m. The employer told her another appointment had been scheduled for 3:00 p.m. that afternoon and asked if she needed transportation. The claimant indicated she did not need any transportation and would give another sample at that time. When the claimant did not report to the scheduled appointment, the employer called her. Initially, the claimant's phone was busy but the second time the employer called at 3:50 p.m., the employer left a message for the claimant to call Harris back immediately. The claimant did not return Harris' call.

At 10:30 p.m. on May 26, the claimant called the employer to report she was ill and unable to work as scheduled. The claimant did not report to work or notify the employer she was unable to work as scheduled for her May 27 shift.

On May 28, when the claimant picked up her payroll check, employer discharged her because she failed to provide an adequate sample that could be tested and failed to go to the scheduled May 26 afternoon appointment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the employer discharged the claimant.

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 employer ultimately discharged the claimant for failing to submit to a random drug test. The claimant's assertion that she gave enough of a sample the morning of May 26 is only her opinion. After a nurse told the claimant she would have to give another sample, the claimant was required to follow that instruction. The claimant knew the employer would take her home the morning of May 26 and would have taken her to another scheduled appointment. The claimant failed to go to any of the appointments the employer arranged for her. The claimant even failed to personally contact Harris in response to the message he left her on the afternoon of May 26. The claimant's failure to follow the employer's instructions about staying at the hospital until an employee picked her up, her failure to go to the 3:00 p.m. appointment, her failure to personally contact Harris and talk to him about giving a sample for the drug test, or that she was ill amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from a claimant. The claimant committed work-connected misconduct. As of May 30, 2004, the claimant is not qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's July 6, 2004 decision (reference 04) is modified but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 30, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/tjc