

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH A WHITE**  
Claimant

**APPEAL NO. 08A-UI-06227-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 06/01/08 R: 02**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kenneth White filed a timely appeal from the June 26, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 21, 2008. Mr. White participated. Connie Hickerson of TALX UC eXpress represented the employer and presented testimony through Production Manager Kevin Smith and Manager Trainee Jim Young. Exhibits Two through Seven were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kenneth White was employed by Jeld-Wen as a full-time warehouse employee from May 7, 2007 until June 6, 2008, when Production Manager Kevin Smith discharged him from the employment. Mr. White had started performing work for Jeld-Wen on January 19, 2007, but worked through a temporary employment agency until he became a Jeld-Wen employee in May. The final incident that prompted the discharge occurred on June 4, when Mr. White angrily kicked a work cart he had been using. The heavy cart traveled 10-12 feet across a work aisle and bounced off a stack of lumber. The force of the kick caused the cart to dent the lumber and would have been enough to injure a passing worker. Managers Jim Young and Dave Shaffer observed Mr. White kick the cart. Mr. Young was approximately 15 feet away from Mr. White. Mr. Young and Mr. Shaffer entered Mr. White's work area and asked him what was going on. Mr. White appeared angry, did not speak, and turned and walked away. Mr. Young and Mr. Shaffer reported the incident to Safety Manager John Murphy, who reported the incident to Production Manager Kevin Smith. Mr. Smith went to Mr. White's area and asked him whether he had kicked a cart across the work aisle. Mr. White repeatedly denied that he had kicked the cart. Mr. Smith directed Mr. Murphy to collect written statements from Mr. Young and Mr. Shaffer.

Mr. White was off work on June 5. On June 5, Mr. Smith spoke with Mr. Young and Mr. Shaffer who reiterated what they had observed and provided written statements. On June 6, Mr. Smith

met with Mr. White. Mr. Smith told Mr. White that he had spoken with the two managers who had observed Mr. White kick the cart. Mr. Smith told Mr. White that he could not tolerate Mr. White's unsafe behavior or his dishonesty. Mr. White indicated that he did not recall kicking the cart. Mr. Smith told Mr. White that his lack of short-term memory had just cost him his job.

On October 5, 2007, Mr. White had become frustrated with a coworker and had thrown window sash materials in the direction of the coworker. The material struck the coworker in the shin. The employer issued a reprimand.

The employer's written Standards of Conduct included a provision that prohibited "disruptive or disorderly behavior or attempts to otherwise interfere with or obstruct production." The employer had reviewed the Standards of Conduct with Mr. White at the time Mr. White became a Jeld-Wen employee.

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

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(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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board,

616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The greater weight of the evidence indicates that Mr. White did in fact angrily and forcefully kick the work cart on June 4, 2008. Mr. White’s conduct was in willful and wanton disregard of the interests of the employer and the safety of other employees. The greater weight of the evidence indicates that Mr. White was untruthful in response to Mr. Smith’s questions about his conduct. The evidence indicates that Mr. White had previously been reprimanded for unsafe conduct in October 2007, when he threw window sash materials at a coworker.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. White was discharged for misconduct. Accordingly, Mr. White is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer’s account shall not be charged for benefits paid to Mr. White.

**DECISION:**

The Agency representative’s June 26, 2008, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer’s account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs