

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHELSIE A FIELDS**  
Claimant

**APPEAL NO: 13A-UI-13965-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 02/17/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jeld-Wen, Inc. (employer) appealed a representative's December 10, 2013 decision (reference 03) that concluded Chelsie A. Fields (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 14, 2014. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on January 13, 2014. The employer indicated that Lee Patterson and one other witness would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the employer's representative and other witness were not available; therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

After a prior period of employment with the employer through a temporary employment firm, the claimant started working directly for the employer on September 10, 2012. She worked full time as a customer service representative at the employer's Grinnell, Iowa manufacturing site. Her last day of work was November 8, 2013. The employer discharged her on that date. The reason asserted for the discharge was having too many disciplinary warnings for such things as attendance and job performance. The most recent issue was that the employer felt that the

claimant was not completing work correctly or effectively; the employer felt that the claimant's response to an email on November 4 which was made on the same day was not completed in a timely manner; no evidence was presented as to in what way the claimant should have better handled the response. The claimant completed her duties to the best of her abilities.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the alleged failure to make a timely response to an email; it is in essence a discharge for unsatisfactory job performance. Misconduct connotes volition. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra; *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). There is no evidence the claimant intentionally failed to work to the best of her abilities. Under the circumstances of this case, the claimant's failures were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and were good faith errors in judgment or discretion. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's December 10, 2013 decision (reference 03) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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