

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF A MAUK
Claimant

APPEAL NO: 11A-UI-14823-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 10/16/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 9, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Amelia Gallagher, a TALX representative, appeared on the employer's behalf. Gayle Kingery and Brett Ruprect testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant commit work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 1998. He worked full time in the shipping department. Raymond Doro supervised the claimant. The claimant understood that in accordance with the employer's policy an employee could be discharged if an employee committed three unsafe acts in a five-year period.

The claimant received a written warning for an unsafe act on June 20, 2008. The claimant received this warning for not locking out equipment as the employer required him to do. On December 16, 2009, the claimant was involved in horseplay. The claimant admitted he engaged in horseplay in December 2009 and the written warning for this incident was warranted. The claimant does not believe the June 2008 write-up was justified because the employer changed the policy that related to this incident.

On October 11, 2011, the claimant sprained his thumb when he tried to rearrange a window that someone else had incorrectly loaded on a truck. The claimant did not want the window to get broken while in transit. The window was stuck and when the claimant was trying to move it, the window became loose and bent the claimant's thumb.

The employer gave the claimant on-going training so he would he knew how to do his job and work safely. The claimant does not recall a training session concerning a situation that he was trying to fix on October 11.

The employer concluded the claimant failed to follow proper loading and safety measures on October 11. The employer also concluded that as a result of the claimant's failure to follow proper safety procedures, the claimant injured his thumb. The employer considered the October 11 incident as the third time in five years the claimant engaged in an unsafe act. Based on the employer's policy – three unsafe acts in a five year period – the employer discharged the claimant on October 15, 2011.

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. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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).

Based on the employer's policy and conclusion that the claimant was involved in an unsafe act on October 11, the employer established business reasons for discharging the claimant. In this case, the claimant did not load the window in the truck. Instead, the claimant noticed the window had not been properly loaded in the truck and tried to rearrange the window so it would not break while in transit. Unfortunately, the window was stuck and when it became unstuck, the window bent the claimant's thumb.

This was an accident. Could the claimant have prevented it from happening? Maybe - maybe not. Even if the claimant could have taken precautions so his thumb would not have gotten injured, the evidence does not establish that he acted carelessly or in such a manner that he intentionally disregarded the employer's interests. The evidence instead establishes the claimant was trying to secure the window in such a way that it would not break while in transit. The claimant did not try to injure his thumb. The employer did not establish that he committed work-connected misconduct. Therefore, as of October 16, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's November 9, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but these reasons do not constitute work-connected misconduct. As of October 16, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css