

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DREW A MATHES
Claimant

APPEAL NO. 08A-UI-00740-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**OC: 12/23/07 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Jeld-Wen (employer) appealed a representative's January 14, 2008 decision (reference 01) that concluded Drew Mathes (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 6, 2008. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Edward O'Brien, Hearings Representative, and participated by Scott Logan, Human Resources Manager; Khristopher Kuker, Reliability Manager; and Troy Dillon, Production Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 12, 2006, as a full-time door assembler. He worked the overnight shift. The claimant received the employer's handbook and completed orientation training at the time of his hire. The employer issued the claimant a written warning on October 26, 2006, for horseplay. On December 12, 2006, the employer issued the claimant a written warning for safety violations. The claimant and his whole team received a written warning on April 4, 2007, for failure to meet work goals. The employer notified the claimant each time that further infractions could result in termination from employment. On June 12, 2007, the employer issued the claimant and a co-worker a verbal warning after an employee complained of mistreatment by the two. The claimant denied teasing the employee.

The employer was having problems with someone on the claimant's shift leaving trash on the floor. On November 12, 2007, the employer verbally warned all the workers on the shift that they should use the trash receptacles or they would be terminated. On November 19 and December 3, 2007, two different workers told the employer that the claimant and his co-worker were responsible for the mess.

On December 5, 2007, the work floor was littered with candy wrappers, tape balls and balled up gloves. The employer questioned the claimant and the co-worker. They admitted to throwing the items on the floor even though the trash receptacle was readily available. Based on the corrective action history of the two, the employer terminated the claimant and issued a final written warning to the co-worker.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An incident of horseplay may constitute job disqualifying misconduct where there has been a previous record of discipline and warnings. Pfeiler v. Employment Appeal Board, 455 N.W.2d 307 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's January 14, 2008 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,240.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw