

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JESSE VANBAALE

Claimant,

and

JELD-WEN INC

Employer.

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HEARING NUMBER: 08B-UI-04119

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was held May 13, 2008. The administrative law judge's decision was issued May 19, 2008 wherein it was determined that the claimant was discharged for having excessive absenteeism. The employer changed his schedule so as to assist the claimant with his poor attendance. The employer did not indicate the dates, nor which absences were excused versus unexcused. Some of the absences were due to his wife's illness. (Tr. 5) The employer issued a last warning on March 6th, 2008. (Tr. 4) On March 14th, the claimant properly called in to report his absence. (Tr. 3) The employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The burden is on the employer to establish that the claimant committed job-related misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In addition, the court in Cosper held that absences due to illness, which are properly reported, are excused and not misconduct. Here, the employer provides no evidence to establish the nature of the claimant's absences that led to his accumulation of points. As for the final act, the record only shows that Mr. Jesse properly called in his absence, but failed to state a reason. As the Iowa Court of Appeals noted in Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Because we are unable to determine whether or not the claimant's absences, namely, the final absence, were due to properly reported illness, we cannot render a decision as the record stands. Thus, the Board is remanding this matter for a new hearing.

DECISION:

The decision of the administrative law judge dated May 19, 2008, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section to schedule and hold a new hearing. The administrative law judge shall conduct the new hearing following due notice. After the new hearing, the administrative law judge shall issue a decision, which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF MONIQUE F. KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester

AMG/fnv