

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN C SEYMOUR
Claimant

APPEAL NO. 08A-UI-03384-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

**OC: 03/02/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jeld-Wen, Inc., filed a timely appeal from an unemployment insurance decision dated March 26, 2008, reference 01, that allowed benefits to Ryan C. Seymour. Due notice was issued for a telephone hearing to be held April 22, 2008. Neither the employer nor the claimant responded to the hearing notice by providing names and phone numbers of witnesses.

ISSUE:

Does the evidence establish that the claimant was discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Ryan C. Seymour filed a claim for unemployment insurance benefits effective March 2, 2008. His last employer was Jeld-Wen, Inc. The Agency notified Jeld-Wen through its unemployment insurance agent, TALX UC eXpress, on March 7, 2008. The agent responded by providing the following information, "The claimant was discharged for excessive absenteeism." Fact-finding notices were issued. Neither the employer nor the agent participated in the fact-finding interview; but afterwards the agent submitted a letter which stated, "The claimant was discharged for excessive absenteeism."

A fact-finding decision was issued in the claimant's favor.

The employer, again through its agent, filed an appeal stating, "The claimant was discharged for excessive absenteeism." As noted above, neither the employer nor the claimant provided a telephone number at which witnesses could be contacted for a formal contested case hearing.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Evidence must provide detailed facts as to the specific reason for a claimant's discharge. Here, allegations are not sufficient to result in disqualification. See 871 IAC 24.32(4). Moreover, in order to provide evidence sufficient for disqualification, the evidence must establish a final, current act of misconduct. See 871 IAC 24.32(8).

The legal standard for attendance cases is excessive unexcused absenteeism. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While excessive unexcused absenteeism is misconduct, absence due to illness or other excusable reason is held against an individual for unemployment insurance purposes if and only if the evidence establishes that the claimant failed to properly report the absence to the employer. See Higgins and 871 IAC 24.32(7).

Reviewing the record, the administrative law judge concludes that the employer has provided absolutely no detailed evidence. There is no evidence of the number of absences. There is no evidence as to the reason for any absence or whether the claimant properly reported any or all of the absences. Finally, there is no evidence from which the administrative law judge can conclude that the discharge was based on a final, current act of misconduct. Benefits are allowed.

This protest and appeal have been nothing but a waste of time and money for all concerned. The parties and the representative should take care that this does not become a pattern.

DECISION:

The unemployment insurance decision dated March 26, 2008, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/pjs