

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JEFFRIE C BEALS
PO BOX 36021
DES MOINES IA 50315

JELD-WEN INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00516-DT
OC: 12/07;03 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jeld-Wen, Inc. (employer) appealed a representative's January 12, 2004 decision (reference 01) that concluded Jeffrie C. Beals (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 February 5, 2004. The claimant participated in the hearing. Ryan Maher appeared on the employer's behalf and presented testimony from one witness, Mike Wearmouth. Based on the evidence, the arguments of the parties, 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?

FINDINGS OF FACT:

The claimant started working for the employer on July 26, 2000. He worked full time as a driver in the employer's Des Moines, Iowa hardwood lumber and plywood distribution business. His last day of work was December 2, 2003. The employer discharged him on that date. The reason asserted for the discharge was the employer's conclusion he had used abusive language toward a customer.

The employer's policies provide that discharge occurs if there are three disciplinary incidents in a six-month period. On November 18, 2003 the claimant had been given a disciplinary write up for failing to keep his equipment clean. The claimant disputed the veracity of the allegation, asserting that it had not been him who had left that truck dirty, but he did sign receipt of the warning. On November 25 the employer asserted that the claimant had left a trailer dirty. The employer prepared a write up, but did not present the write up to the claimant until December 2, when the employer also presented the claimant with the third write up and termination. The claimant did not agree that he had pulled the trailer that had been left dirty and would not accept that write up. He did not know that his job was in jeopardy until December 2 when he was discharged.

The final write up was a result of a complaint the employer received on November 26 from a customer in Omaha. The customer asserted to the employer that the customer had declined delivery of a sheet of plywood because of color, and that when the claimant was told the customer refused to accept the sheet, he became upset, used abusive language including the "f word," and "cart wheeled" the sheet of plywood into the trailer, causing damage to the corners of the sheet. The employer asserted that the piece of plywood became so damaged that it had to be discarded.

The claimant denied that he had used abusive language to the customer including the "f word," and asserted that part of the reason the customer was rejecting the sheet of plywood was that it already had some slight damage to the corner. Further, he did not "cart wheel" or throw the sheet back into the trailer, but slid it on the floor. He did not resist or argue with the customer's request to reject the sheet, but advised the customer that there might be a restocking fee, to which the customer said "b - - - s - - -, I won't pay it" and walked away. The claimant returned with the plywood to Des Moines the evening of November 26 and restocked the plywood.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue 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 questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 Section 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).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the final write up for the incident with the Omaha customer. First, it does not appear that the employer effectively gave the claimant a second warning so as to put him on notice that his job was in jeopardy if there were further incidents. Secondly, the employer has failed to establish that either the second or third disciplinary incidents were warranted. Specifically dealing with the final incident, the claimant denied using abusive language or throwing the plywood. No first-hand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The employer relies exclusively on the second-hand account; however, without that information being provided first-hand or more corroborating evidence being provided, the administrative law judge is unable to ascertain whether the complainant is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of the complainant's report. Under the circumstances, the administrative law judge finds the claimant's first-hand information more credible. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. 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 January 12, 2004 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/b