

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMERON FERRELL
Claimant

APPEAL NO. 08A-UI-11107-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 11-02-08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 21, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 10, 2008. The claimant participated in the hearing. Elliott Huff, Manager Intern; Jamie Gibson, Coordinating Manager; and Raul Ybanez, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time magna double hung welder for Jeld-Wen from January 7, 2008 to October 30, 2008. He was discharged for excessive, unexcused absenteeism. The employer's attendance policy does not state specifically how many absences an employee may accumulate before warnings or termination will occur. The employer testified it was subject to their interpretation. On January 21, 2008, the claimant called in and reported he would not be in but did not provide the employer with a reason, although he testified he was ill; on April 17, 2008, he was a no-call, no-show; on May 15, 2008, he was five minutes tardy returning from lunch; on May 27, 2008, he called in and reported he would not be in but did not provide a reason; on July 15, 2008, he was one hour tardy; on August 11, 2008, he was 15 minutes tardy; on September 29, 2008, he went home because he was ill and brought a doctor's note covering his absence; and on October 22 and 23, 2008, he called in and reported he would not be at work. He did not provide a reason October 22, 2008, but told the employer October 23, 2008, he was ill and the employer told him he needed to bring a doctor's excuse or his job would be in jeopardy. The employer did not work October 24, 2008, and the claimant went to see his physician that day, but his physician would not backdate his note to excuse him for October 22 and 23, 2008. The claimant told the employer October 28, 2008, he could not get a note and the employer terminated his employment October 30, 2008. The employer also laid off the second shift October 30, 2008. The claimant received verbal warnings in writing for absenteeism or tardiness January 21, April 17, and May 15, 2008, and written warnings for absenteeism or tardiness July 15, August 11, and two for October 22 and October 23, 2008, on October 29, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant had six absences, five of which were properly reported and at least three of those that were due to illness, one no-call, no-show and three incidents of tardiness, his last two absences were due to properly reported illness. Although he failed to provide a doctor's excuse for his last absences October 22 and 23, 2008, and should have gone to the doctor October 22 instead of going October 24, 2008, and expecting the doctor to backdate his note, the evidence establishes that the claimant was in fact ill October 22 and 23, 2008, and did properly call in and report his absences. Therefore, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Benefits are allowed.

DECISION:

The November 21, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw